



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

WORKSHOP 6:00 p.m.

- The Town Council and Town Manager will meet to discuss its 2017 goals and the FY'18 budget goals

January 9, 2017

Kittery Town Council
Regular Meeting
7:00 p.m.

Council Chambers

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – 1/11/16, 1/25/16 and 1/12/28/16 Regular Meetings
8. Interviews for the Board of Appeals and Planning Board
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.
10. PUBLIC HEARINGS
 - a. (010117-1) The Kittery Town Council moves to hold a public hearing on an application from Woodland Farms Brewery LLC, 1 Rowans Way, Kittery ME for a Special Activity Amusement Permit for Woodland Farms Brewery, 306 US Route 1, Suite C.
 - b. (010117-2) The Kittery Town Council moves to hold a public hearing on amendments to Title 2 of the Kittery Town Code to add the Harbormaster position.
11. DISCUSSION
 - a. Discussion by members of the public (three minutes per person)
 - b. Response to public comment directed to a particular Councilor
 - c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

(110216-2) The Kittery Town Council moves to continue the Assessment Hearing for Dow Highway Properties, LLC.

13. NEW BUSINESS

a. Donations/gifts received for Council disposition

(010117-3) The Kittery Town Council moves to accept an anonymous donation in the amount of \$200.00 to be deposited in account # 2063-43600 Kittery Community Center.

b. (010117-4) The Kittery Town Council moves to approve the disbursement warrants.

c. (010117-5) The Kittery Town Council moves to approve an Inter Municipal Agreement between the Town of Kittery and the Kittery Port Authority.

d. (010117-6) The Kittery Town Council moves to amend the Personnel Position-Classification Policy to add the Harbormaster job description.

e. (010117-7) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Board of Assessment Review to interview Alan Rindler for his appointment as an alternate member to that board until 12/31/20.

f. (010117-8) The Kittery Town Council moves to accept the resignation of Peter S. Johnson from the Port Authority effective immediately.

g. (010117-9) The Kittery Town Council moves to authorize the Town Manager to seek an agreement with Fairpoint to affix flags to telephone poles long State Road.

h. (010117-10) The Kittery Town Council moves to approve a renewal application from Loco Coco's Tacos Corp., 36 Walker Street, Kittery, ME for a Spirituous and Vinous Liquor License for Loco Coco's Tacos, 36 Walker Street.

14. COUNCILOR ISSUES OR COMMENTS

15. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

16. EXECUTIVE SESSION

17. ADJOURNMENT



TOWN OF KITTERY
Office of the Town Manager
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806
kamaral@kitteryme.org

Town Manager's Report to the Town Council
January 5, 2017

1. **Recognition of Mr. Thomas Dinsmore** – The Town of Kittery recognizes the volunteer efforts of Mr. Thomas Dinsmore. He contributed excavation, pipe laying, and sewer connection work to his neighbors as part of the Sewer Expansion project.
2. **Website Survey** – We have launched the redesign project for the Town's website. The first phase includes gathering input from customers on the current website. A brief five-question survey is available online at kitteryme.gov or in paper-form at Town Hall, the KCC, and Library. Launch of the new site is expected by early July.
3. **Report to Council: Cullen Development Proposal** – In the Council Packet is a Report to Council regarding Mr. William Cullen's development proposal. Mr. Cullen is requesting the Town partner with him on the expansion of utility services (water, power) and the installation of roadways to support development on his parcel and the adjacent parcels.

Regarding this matter, Chris DiMatteo and I have met with Mr. Cullen and have had a conversation with the Trustee for the Dennett property. This matter was also discussed at the Economic Development Committee meeting in December, which Mr. Mylroie attended.

The Business Park zone includes parcels owned by three separate entities and abuts two primary roads. Sewer service was extended along the southeastern end of the zone. There are wetlands throughout the zone. I am not fully aware of extent of the wetlands and the total reduction of developable land area resulting from them. It unclear whether a land use assessment has been updated for the entire zone.

I believe, based on the information I have so far, that insufficient utilities are in fact a hurdle to beneficial buildout of the business park. Mr. Cullen has invested a great deal of time and effort to come up with a plan that works for his needs. Whether this plan is the best approach to resolve the identified hurdle for the entire zone has not been fully vetted by the Town.

To have a basis for evaluation of the plan, we are pursuing a feasibility study for the zone. This is being done with the support of the Planning Board and EDC and will be conducted by Southern Maine Planning and Development Commission. The feasibility study will comprehensively look at the entire zone and identify the highest/best-use given the topographical/geographical and market

limitations, zoning changes needed to achieve beneficial build-out, and cost effective approaches to supplying utilities and roads to support the zone. This study will result in one of two possible outcomes: 1) Mr. Cullen's proposal will be supported by the study and give the Town a more solid footing to pursue support for zoning amendments and utility investment or 2) identify other options to inform and more fully evaluate Mr. Cullen's proposal. The study is expected to be complete by June.

I understand Mr. Cullen has been waiting for a number of years to develop his parcel. He has potential interested parties that could bring about much needed development in the business park zone in the near term. I also understand that any Credit Enhancement Agreement must be accompanied by an approved development plan. The development plan proposed by Mr. Cullen will require a number of zoning amendments.

Given all these factors, I recommend that we continue a dialogue with Mr. Cullen and his representatives regarding his development options, potential zoning amendments, the prospect of a Credit Enhancement Agreement, with the understanding that we will not enter into any negotiations until the feasibility study is complete. If it is found, through the study, that other options are equally viable, then the dialogue will incorporate that information and shape the process going forward.

I am seeking Council guidance relative to how you want to proceed.

Respectfully Submitted,



Kendra Amaral
Town Manager

1. Call to Order

Chairperson Beers called the meeting to order at 7:01 p.m.

2. Introductory

Chairperson Beers read the introductory.

3. Pledge of Allegiance

Chairperson Beers led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll call were Chairperson Gary Beers, Vice Chairperson Charles Denault, Councilors Frank Dennett, Russell White, Jeffrey Thomson, Judith Spiller, and Kenneth Lemont.

5. Agenda Amendment and Adoption

Councilor Lemont requested to amend Item 16 to read "The Kittery Council moves to go into Executive Session in accordance with 1 MRS §405 6-A with the Town Manager to discuss compensation" and move Item 12 to follow Item 16.

Councilor White requested to add Item 13f to read "The Kittery Town Council moves to appoint Eric Lemont to the KCC Board of Directors effective 1/25/16 until 12/31/18."

Councilor Thomson questioned the purpose of the Executive Session since there is a motion on the floor from the previous meeting. Councilor Lemont explained that it is to discuss the compensation of the Town Manager with the Town Manager. Councilor Dennett suggested that it is strictly up to the Chair to decide whether the Executive Session can be added to the agenda. Chairperson Beers replied to Councilor Dennett that a roll call vote can be in order if the Chair requests it per Robert's Rules of Order. Vice Chairperson Denault felt that this is the typical process and stated that the proper procedure is to go into Executive Session and subsequently make a determination. Councilor White understood that the 3-year contract includes those details. The only issue left standing is the amount of increase of the Town Manager's salary. Councilor Spiller felt it would not be fair to keep the item at the bottom of the agenda. Councilor Thomson noted the original information was provided well in advance. If it was intended to have an Executive Session, then that should have been made already. He did not feel it proper to have a drastic amendment to the agenda. The motion on the floor deals only with a percentage increase to monetary compensation. Councilor Thomson referenced the motion that was postponed, which indicated to increase the salary by 2.25%. Chairperson Beers replied to Councilor Lemont that it was understood the only parliamentary protocol to handle the matter was to establish an executive session in an agenda amendment and move the item in question thereafter.

CHAIRPERSON BEERS CALLED FOR A ROLL CALL VOTE TO AMEND THE AGENDA. THE AGENDA AMENDMENT FAILED TO PASS BY A ROLL CALL VOTE 3/4/0, WITH COUNCILORS DENNETT, THOMSON, SPILLER, AND WHITE OPPOSED.

38 Agenda was adopted, as presented.

39 6. Town Manager's Report

40 Town Manager Colbert Puff reviewed her written report.

41 **Police Chief Search Update** – Eliot Town Manager, Dana Lee, has provided his comments and
42 Town Manager Colbert Puff plans to add hers and publicize that information soon.

43 **Police Lieutenant Retirement** – Lieutenant Russ French announced his retirement from the
44 Kittery Police Department, effective at the end of this month. He is the newly appointed Police
45 Chief in Rangeley and she wished him all the best in his future endeavors.

46 **Rice Public Library (RPL) Board of Directors Update** – The Library Committee was asked to
47 look into the new Fitzpatrick property. Council had asked specific questions as to what the
48 facility would consist of, how it would be accessed, the impact on the neighborhood, future
49 dispositions of the Rice and Taylor buildings, and impact on the Library's budget. A member,
50 George Dow, provided information that the RPL Board is no longer considering the Fitzpatrick
51 property as the new location. The RPL Board voted to endorse an effort with the Town to
52 identify whether or not a location on the Kittery Community Center may be an appropriate
53 location for the library. They intend to start a dialog for this effort. They plan to report back to
54 Council in the near future.

55 **Town Council Minutes Review** – After discussion with the Town Clerk and Chairperson, it is
56 proposed to have the minutes provided a week prior to the regular meeting for Council members
57 to provide their individual edits, which will increase process efficiency. The minutes are
58 intended to be more of a summary, rather than a disposition of the meetings and staff hopes to
59 gain a long-term recorder soon.

60 **Sewer Betterment Estimates** – Letters have been mailed to all property owners regarding how
61 the sewer betterments will be assessed. A sample letter was provided to Council.

62 Town Manager Colbert Puff reviewed an item not included in her written report.

63 **State Grant** – She is working with Kittery, Eliot, Berwick, and South Berwick to finalize a grant
64 for official delivery of the Efficient Delivery of Local and Regional Government Services
65 Award. They are preparing a grant for submission which is expected to be between \$2,000 and
66 \$3,000 and there is no match requirement. The joint effort to combine dispatches would expect
67 to save the Town \$1.4 million over the course of five years.

68 Councilor Dennett asked that the minutes be provided by electronic means, including fax.

69 7. Acceptance of Previous Minutes

70 Regular Meeting – June 22, 2015

71 Line 44 – replace “Kittery Planning and Development Commission” with “Southern Maine
72 Planning and Development Commission”

73 Line 53 – replace “Rosenule” with “Rossignol”

74 Line 58 – replace “Brownfield” with “Brownfields”

75 The minutes were adopted, as amended.

76 8. Interviews for the Board of Appeals and Planning

77 Board of Appeals: re-appointment until 11/1/18

78 • Craig Wilson

79 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO RE-APPOINT CRAIG**
80 **WILSON TO THE BOARD OF APPEALS UNTIL 11/1/18 WITHOUT THE BENEFIT**
81 **OF AN INTERVIEW, SECONDED BY VICE CHAIRPERSON DENAULT.**

82 Councilor Thomson asked Mr. Wilson about his background.

83 Councilor Dennett requested that the motion be amended to include an effective date of 11/1/15
84 be included.

85 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0, AS AMENDED.**

86 9. All items involving the town attorney, town engineers, town employees or other town
87 consultants or requested officials.

88 a. (010116-1) The Kittery Town Council moves to authorize through an alternative
89 procurement method, in accordance with Sec. 3.2.7 of the Kittery Town Code, for a new four
90 year Ambulance Service Agreement between the Towns of Kittery and Eliot and American
91 Ambulance New England, Inc. (AANE) for ambulance service, and an extension to the Lease
92 Agreement with American Ambulance, Inc. and the Town of Kittery of the old Walker Street
93 Fire Station for the delivery of emergency medical services until June 30, 2017, and authorizes
94 the Town Manager to sign all necessary documents.

95 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO AMEND THE MAIN**
96 **MOTION TO READ TO AUTHORIZE THE AFOREMENTIONED AS AN**
97 **ALTERNATIVE PROCUREMENT METHOD, IN ACCORDANCE WITH SEC 3.2.7 OF**
98 **THE KITITERY TOWN CODE, SECONDED BY COUNCILOR WHITE. THE MOTION**
99 **PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

100 **THE MAIN MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

101 b. (010116-2) The Kittery Town Council moves to approve the Wood Island Life
102 Saving Station Repair, Maintenance and Use Agreement called "Agreement Two".

103 **A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO APPROVE THE**
104 **WOOD ISLAND LIFE SAVING STATION REPAIR, MAINTENANCE AND USE**
105 **AGREEMENT CALLED "AGREEMENT TWO", SECONDED BY COUNCILOR**
106 **WHITE.**

107 Councilor Dennett noted that the Town Attorney had not yet completed review of the agreement.

108 **A MOTION WAS MADE BY COUNCILOR DENNETT TO POSTPONE THE**
109 **APPROVAL OF THE WOOD ISLAND LIFE SAVING STATION REPAIR,**
110 **MAINTENANCE AND USE AGREEMENT CALLED "AGREEMENT TWO" TO THE**
111 **JANUARY 25, 2016 REGULAR MEETING, SECONDED BY COUNCILOR SPILLER.**
112 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

113 10. PUBLIC HEARINGS – None.

114 11. DISCUSSION

115 a. Discussion by members of the public (three minutes per person)

116 Matthew Brock, 50 Goodwin Road

117 Mr. Brock cited a letter regarding positive support for Town Manager Colbert Puff and the
118 consideration for her pay raise. The letter was signed by approximately 70 Kittery residents and
119 additional signatures have been provided directly to Town Hall.

120 Ann Grinnell, 5 Stimson Street

121 Ms. Grinnell asked for further clarification as to how the motion to act on the Town Manager's
122 salary could be transferred into an executive session, given that it originally was in the public
123 form.

124 David Lincoln, 100 Shepards Cove Road

125 Mr. Lincoln expressed various concerns for the amount of deliberation that has been had
126 regarding the Town Manager's salary and encouraged the Council to move forward with the
127 matter.

128 George Dow IV, 1 Bartlett Road

129 Mr. Dow expressed concerns regarding the treatment that the Town Manager has received and
130 suggested to provide the detail that justifies approving or denying her salary increase.

131 Karen Kalmar, Kittery Point

132 Ms. Kalmar echoed previous statements made regarding the Town Manager's salary.

133 Steven Workman, 10 Bridge Street

134 Mr. Workman complimented Town Manager Colbert Puff's efforts and devotion. He encouraged
135 the Council to take that into consideration when deliberating the salary increase.

136 Jim Forbes, 31 Mill Pond Road

137 Mr. Forbes expressed various concerns regarding the recent workshop with the Kittery Port
138 Authority. He asked whether the new rules and regulations put forth by the KPA are recognized
139 by the Council and Town Manger and whether they are enforceable.

140 Mark Alesse, 176 Brave Boat Harbor Road

141 Mr. Alesse mentioned that there is a level of dysfunction occurring within the Council. He
142 encouraged that a highly qualified Town Manager be treated and rewarded appropriately. He felt
143 that the community is dissatisfied with the Council.

144 Robert Harris, 40 Cutts Road

145 Mr. Harris explained his concerns for his observed procedures for the water line installation.

146 Martha Peterson

147 Ms. Peterson served on the committee to interview the candidates for the position. She felt that
148 the Town is very lucky and she encouraged the Council to consider the quality of the Town
149 Manager that we have.

150 Tom Hibschan, 188 Brave Boat Harbor Road

151 Mr. Hibschan encouraged the Council to work out the matter of the Town Manager's salary
152 and move forward.

153 b. Response to public comment directed to a particular Councilor – None.

154 c. Chairperson's response to public comments

155 Mr. Harris – Chairperson Beers requested that the Town Manager to research and provide
156 follow-up information to Mr. Harris.

157 Mr. Forbes – Chairperson Beers requested that the Town Manager draft a written response
158 regarding the relationship between the Town and the Kittery Port Authority.

159 Ms. Grinnell – The item in question was heard at the November 9, 2015 meeting and postponed
160 to a date specific of January 11, 2016. The reason it was postponed because Councilor Spiller
161 was not available for the regular meetings in December and Councilor Lemont asked for further
162 compensation information. The parliamentary protocol was put forth in unfinished business as
163 required by the postponed motion from November 9, 2015. The agenda amendment adoption
164 protocol admits any Councilor to request to amend the agenda as they wish. That took place and
165 the request was denied.

166 Others – It is pleasant to see the positive support for Town Manager Colbert Puff.

167 12. UNFINISHED BUSINESS

168 (110215-4) The Kittery Town Council moves to act on the Town Manager's salary
169 from November 12, 2015 through November 12, 2015.

170 **THE MOTION MADE IN THE NOVEMBER 9, 2015 MEETING BY COUNCILOR**
171 **THOMSON FOR THE KITTERY TOWN MANAGER TO RECEIVE AN**
172 **ADJUSTMENT IN WAGES OF 2.25% EFFECTIVE NOVEMBER 12, 2015 FOR THE**
173 **NEXT TWELVE MONTH PERIOD, SECONDED BY COUNCILOR SPILLER**
174 **RETURNED TO THE FLOOR FOR DISCUSSION.**

175 Councilor Lemont noted his concerns raised in the November 9, 2015 meeting. After discussion
176 with other Town Managers, he received positive support for Town Manager Colbert Puff's
177 efforts.

178 **A MOTION WAS MADE BY COUNCILOR LEMONT TO AMEND THE MOTION TO**
179 **REFLECT AN INCREASE OF WAGES FROM \$106,575 TO \$110,575 FOR AN**
180 **APPROXIMATE 3.75% INCREASE, SECONDED BY COUNCILOR SPILLER.**

181 Vice Chairperson Denault felt that the appropriate way to handle matter would have been to
182 conduct the discussion in an Executive Session.

183 Councilor Spiller noted that in the past eleven years in her experience, wage adjustments have
184 been handled in either a public forum or through Executive Session.

185 Councilor Thomson noted that an Executive Session for the matter was held on October 21,
186 2015. Vice Chairperson Denault acknowledged that it was held, but not concluded.

187 **THE MOTION TO AMEND THE MAIN MOTION PASSED BY A ROLL CALL VOTE**

188 **5/1/1, WITH COUNCILOR DENNETT OPPOSED AND CHAIRPERSON BEERS**
189 **ABSTAINING.**

190 Chairperson Beers stated his abstention from the vote due to his absence in the performance
191 evaluations and was not presented with that information as a basis for the compensation
192 recommendation.

193 **THE MAIN MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/1, WITH**
194 **CHAIRPERSON BEERS ABSTAINED.**

195 13. NEW BUSINESS

196 a. (010116-3) Donations/gifts received for Council disposition

197 • The Kittery Town Council moves to accept donations in the amount of \$3,705.50
198 for the Thresher Memorial Fund to be deposited in account #5007-43600.

199 **THE MOTION MADE IN THE DECEMBER 14, 2015 MEETING BY COUNCILOR**
200 **SPILLER TO ACCEPT DONATIONS IN THE AMOUNT OF \$2,760.50 FOR THE**
201 **THRESHER MEMORIAL FUND TO BE DEPOSITED IN ACCOUNT #5007-43600,**
202 **SECONDED BY COUNCILOR THOMSON RETURNED TO THE FLOOR FOR**
203 **DISCUSSION.**

204 **A MOTION WAS MADE BY COUNCILOR SPILLER TO AMEND THE MAIN**
205 **MOTION TO REVISE THE AMOUNT FROM \$2,760.50 TO \$3,705.50, SECONDED BY**
206 **COUNCILOR WHITE. THE MOTION PASSED BY A UNANIMOUS VOICE VOTE**
207 **7/0/0.**

208 Councilor Dennett thanked the Council for postponing the action for benefit to correct the
209 administrative error.

210 **THE MAIN MOTION PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

211 • The Kittery Town Council moves to accept a donation from Meetinghouse
212 Village in the amount of \$100 to be deposited in account #2063-43600.

213 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ACCEPT A DONATION**
214 **FROM MEETINGHOUSE VILLAGE IN THE AMOUNT OF \$100 TO BE DEPOSITED**
215 **IN ACCOUNT #2063-43600, SECONDED BY COUNCILOR WHITE. THE MOTION**
216 **PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

217 b. (010116-4) The Kittery Town Council moves to appoint PJ Johnson to the Port
218 Authority until 8/31/20.

219 **A MOTION WAS MADE BY COUNCILOR LEMONT TO APPOINT PJ JOHNSON TO**
220 **THE PORT AUTHORITY UNTIL 8/31/20, SECONDED BY COUNCILOR WHITE. THE**
221 **MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

222 c. (010116-5) The Kittery Town Council moves to approve an application for a Malt,
223 Spirituous and Vinous Liquor License for Tasty Thai, Inc., 599 Lafayette Road, Portsmouth, NH,
224 for Tasty Thai, 182 State Road.

225 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE AN**
226 **APPLICATION FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR**
227 **TASTY THAI, INC., 599 LAFEYETTE ROAD, PORTSMOUTH, NH, FOR TASTY**
228 **THAI, 182 STATE ROAD, SECONDED BY COUNCILOR WHITE. THE MOTION**
229 **PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

230 d. (010116-6) The Kittery Town Council moves to approve the disbursement warrants.

231 Town accounts payable of \$176,023.95.

232 Sewer account payable of \$12,436.56.

233 Sewer account payable of \$1,664,462.14 to be paid with bond trophies.

234 Total of all disbursement warrants of \$1,852,922.68.

235

236 Councilor Dennett stated that the Town and Sewer warrants were in due form.

237 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE**
238 **DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR SPILLER. THE**
239 **MOTION PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

240 e. (010116-7) The Kittery Town Council moves to approve the Town Manager's
241 proposal to offer a funded HRA with the PPO 500 health insurance plan for non-union
242 employees.

243 **A MOTION WAS MADE BY COUNCILOR WHITE TO APPROVE THE TOWN**
244 **MANAGER'S PROPOSAL TO OFFER A FUNDED HRA WITH THE PPO 500**
245 **HEALTH INSURANCE PLAN FOR NON-UNION EMPLOYEES, SECONDED BY**
246 **COUNCILOR SPILLER.**

247 Town Manager Colbert Puff explained that the HRA stands for Health Reimbursement Account.
248 Currently, the Town offers three different health care plans for non-union employees. Maine
249 Municipal announced that the plan most of the Town employees are enrolled in will be soon
250 discontinued. They have advised to offer a Preferred-Provider Plan (PPO). She proposes to fully
251 fund the deductibles to incentivize the employees to switch to the PPO plan.

252 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

253 14. COUNCILOR ISSUES OR COMMENTS

254 Councilor White expressed appreciation to Councilor Lemont for his research and advocacy for
255 the Town Manager's salary.

256 Councilor White asked the Council to consider conducting an annual self-evaluation to increase
257 effectiveness as a body.

258 Councilor White noted that the sewer Assessments are surprisingly high. He suggested that
259 consideration be had for open spaces and the level of assessment for that type of land.

260 Councilor Thomson mentioned that 641 Kittery Community Center memberships were created in
261 the membership special promotion that was run for six weeks. He provided further details as to
262 the changes in memberships and the overall increased revenues generated from that.

263 Councilor Thomson noted that there is a workshop to be held by the Maine Municipal
264 Association for Local Planning Boards & Board of Appeals on Tuesday, February 23, 2016 at
265 the Ramada Inn in Saco, ME.

266 Councilor Thomson welcomed public input regarding the future of the Safford school.

267 Councilor Thomson noted that Portsmouth Smart Growth is hosting a workshop on January 28-
268 29, 2016 regarding affordable and workforce housing at the 3S Artspace and The Portsmouth
269 Public Library.

270 Vice Chairperson Denault requested that a complete evaluation of the Town Manager's
271 performance be conducted. He did not believe that retroactive pay was included in her contract.

272 Vice Chairperson Denault expressed concerns that have been raised regarding the sewer
273 betterment assessments for the lack of communication regarding the preliminary Assessments.
274 He clarified to Councilor Thomson that most of the concerns were in regard to the calculation
275 formula.

276 Chairperson Beers replied to Councilor Lemont that the Town Manager presented the Town's
277 goals to the School Committee and School Superintendent on December 15, 2015.

278 Councilor Lemont congratulated the appointment of PJ Johnson to the Port Authority.

279 15. COMMITTEE AND OTHER REPORTS

280 a. Communications from the Chairperson

281 Chairperson Beers asked the Council to communicate to the Town Manager their expectations
282 for the current established Library Committee.

283 Chairperson Beers stated the drafted Council goals for 2016. He asked that Council submit their
284 comments or revisions to the goals for consideration in the next meeting.

285 b. Committee Reports

286 Councilor Spiller noted that the York Wildlife and River Study Committee will be meeting on
287 January 26, 2016 at 5:30pm in Grand House in York, ME.

288 16. EXECUTIVE SESSION – None.

289 17. ADJOURNMENT

290 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ADJOURN THE MEETING**
291 **AT 8:40 P.M., SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION**
292 **PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

293 Submitted by Marissa Day, Minutes Recorder, on December 30, 2016.

294 *Disclaimer: The following minutes constitute the author's understanding of the meeting. While*
295 *every effort has been made to ensure the accuracy of the information the minutes are not intended*
296 *as a verbatim transcript of comments at the meeting, but a summary of the discussion and*
297 *actions that took place. For complete details, please refer to the video of the meeting on the*

298 *Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*

1 1. Call to Order

2 Chairperson Beers called the meeting to order at 7:00 p.m.

3 2. Introductory

4 Chairperson Beers read the introductory.

5 3. Pledge of Allegiance

6 Chairperson Beers led those present in the Pledge of Allegiance.

7 4. Roll Call

8 Answering the roll call were Chairperson Gary Beers, Vice Chairperson Charles Denault,
9 Councilors Frank Dennett, Russell White, Jeffrey Thomson, Judith Spiller, and Kenneth Lemont.

10 5. Agenda Amendment and Adoption

11 Chairperson Beers requested that Items 13d and 13e be moved prior to Items 9a and 9b.

12 The agenda was adopted as amended.

13 6. Town Manager's Report

14 Town Manager Colbert Puff reviewed her written report as follows.

15 **Police Chief & Lieutenant Search** – Given the recent decision from Eliot, The Police Chief and
16 Lieutenant positions will be advertised immediately and open to both internal and external
17 applicants.

18 **Title 13 Code Change**– A draft Title 13 amendment would be forthcoming regarding the sewer
19 assessment appeals process.

20 **Wood Island Hazardous Material Remediation** – Ransom Environmental are drafting their
21 final proposal for the Wood Island cleanup using the Brownfields Program grant. It is hoped that
22 in conjunction with WILSSA, both that work and the exterior restoration work will be advertised
23 soon.

24 **Library Committee** – A meeting with the Rice Public Library (RPL), Kittery Community
25 Center (KCC), and the Library Committee was held to discuss future plans for the library.
26 Another meeting is scheduled in February.

27 It is recommended that a new library committee be formed with the focus on the construction of
28 any new proposed library. The existing library committee is expected to complete their work and
29 report to Council to make a recommendation for moving forward.

30 **Efficient Delivery of Local and Regional Government Services Grant Application** – A grant
31 was submitted to the aforementioned program to fund equipment at a joint regional dispatch
32 center as discussed.

33 Town Manager Colbert Puff reviewed items not included in her written report as follows.

34 **Former Committees** – The Planning Board memo to Council indicates the progress in
35 reconstituting the Kittery Foreside Committee and the Kittery Design Review Committee as
36 advocated by some residents.

37 **Shellfish Conservation Committee Meeting**– A meeting is scheduled with the Chair of the
38 Shellfish Conservation Committee to discuss recent issues raised before the Council.

39 **Kittery Port Authority Subcommittee** – The Chair of the Kittery Port Authority discussed with
40 the Town Manager regarding a proposal for a joint subcommittee for various KPA issues.

41 **Capital Improvement Committee (CIP)** – The first Capital Improvement Committee meeting
42 is scheduled for October 15, 2016.

43 Town Manager Colbert Puff explained to Councilor Spiller that the EPA grant for the Wood
44 Island cleanup should take roughly 60 days. The contract extends until mid-2017 and the cleanup
45 only needs to commence work before that end date.

46 Vice Chairperson Denault asked if any discussion was had with Chief Short regarding extending
47 his retirement date. Town Manager Colbert Puff understood that Chief Short had suggested that
48 as a possibility, but further discussion would need to be had.

49 7. Acceptance of Previous Minutes – None.

50 8. Interviews for the Board of Appeals and Planning

51 Board of Appeals: one appointment effective 1/25/16 until 3/1/17

52 • Barry Fitzpatrick

53 Mr. Fitzpatrick explained his background, experience and education that he felt qualified him for
54 the position on the Board of Appeals. He understood the primary function of the Board of
55 Appeals is to serve residents when they have an appeal against a decision of any board or
56 committee within the Town. He had the opportunity to attend some of the meetings. His
57 understanding of a conflict of interest is when an individual that could gain financial benefit
58 from a decision then they should recuse themselves.

59 • Nanci Lovett

60 Ms. Lovett described her reason for her application and her professional experience that she felt
61 qualified herself for the position on the Board of Appeals. She understood the primary function
62 of the Board of Appeals is to follow the law, hear the appeal, and review variances. In an appeal
63 process for herself to build an in-law apartment, she learned the processes of the meetings. A
64 conflict of interest arises when an individual has a personal connection or financial benefit to a
65 case and would then have to recuse from the vote.

66 **A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO APPOINT BARRY**
67 **FITZPATRICK TO THE BOARD OF APPEALS EFFECTIVE 1/25/16 UNTIL 3/1/17,**
68 **SECONDED BY COUNCILOR LEMONT.**

69 **A MOTION WAS MADE BY COUNCILOR SPILLER TO APPOINT Nanci Lovett**
70 **TO THE BOARD OF APPEALS EFFECTIVE 1/25/16 UNTIL 3/1/17, SECONDED BY**
71 **COUNCILOR WHITE.**

72 Councilor White expressed his positive satisfaction with the two applicants.

73 Councilor Spiller stated she supported Nanci Lovett for her thorough and informed response
74 regarding the function and processes of the Board.

75 **THE MOTION TO APPOINT BARRY FITPATRICK PASSED BY A ROLL CALL**
76 **VOTE 5/2/0, WITH COUNCILOR SPILLER AND CHAIRPERSON BEERS OPPOSED.**

77 **THE MOTION TO APPOINT Nanci Lovett FAILED TO PASS BY A ROLL CALL**
78 **VOTE 4/3/0, WITH VICE CHAIRPERSON DENAULT, COUNCILOR LEMONT,**
79 **COUNCILOR DENNETT OPPOSED.**

80 **CHAIRPERSON BEERS RECUSED HIMSELF FROM THE FOLLOING ITEM AND**
81 **TURNED THE MEETING OVER TO VICE CHAIR DENAULT.**

82 Planning Board: one appointment effective 1/25/16 until 11/30/18

83 • Brett Costa

84 Mr. Costa explained his experience in the Board of Appeals and his professional experience that
85 qualifies him for the Board appointment. He understood the function of the Planning Board is to
86 develop the Code, help steer the direction of the Town, and assist with developing the
87 Comprehensive Plan. He hoped to share his expertise with the Planning Board and help clarify
88 the Code. He felt certain that he could make a decision that stands by the Code regardless of how
89 much it negatively affects the applicant and/or developer. A decision he made in the December
90 8, 2015 Board of Appeals meeting was based on his own principle of 'reasonable return'.

91 • Leroy Dunkelberger

92 Mr. Dunkelberger described his personal experiences and professional skills that qualifies him
93 for the Board appointment. He understood the function of the Planning Board to help develop
94 ordinances to align with the Comprehensive Plan and assess the applicability of proposed plans.
95 He explained his understanding of controlling growth within a community. He stated his
96 availability for attending trainings and meetings. He added to the definition of a conflict of
97 interest as more than just having a financial interest, but also having a personal interest or even
98 an appearance of a bias.

99 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPOINT LEROY**
100 **"DUTCH" DUNKELBERGER TO THE PLANNING BOARD EFFECTIVE 1/25/16**
101 **UNTIL 11/30/18, SECONDED BY COUNCILOR SPILLER.**

102 **A MOTION WAS MADE BY COUNCILOR LEMONT TO APPOINT BRETT COSTA**
103 **TO THE PLANNING BOARD EFFECTIVE 1/25/16 UNTIL 11/30/18, SECONDED BY**
104 **VICE CHAIRPERSON DENAULT.**

105 **THE MOTION TO APPOINT LEROY DUNKELBERGER PASSED BY A ROLL CALL**
106 **VOTE 4/2/0, WITH VICE CHAIRPERSON DENAULT AND COUNCILOR DENNETT**

107 **OPPOSED.**

108 **THE MOTION TO APPOINT BRETT COSTA FAILED TO PASS BY A ROLL CALL**
109 **VOTE 3/3/0, WITH COUNCILOR WHITE, COUNCILOR THOMSON, AND**
110 **COUNCILOR SPILLER OPPOSED.**

111 **CHAIRPERSON BEERS RESUMED CONDUCT OF THE MEETING.**

112 9. All items involving the town attorney, town engineers, town employees or other town
113 consultants or requested officials.

114 a. (010216-6) The Kittery Town Council moves to re-appoint the following members to
115 boards, committees and commissions effective 1/25/16

116 Board of Assessment Review

- 117 • Joseph Afienko until 12/31/18
- 118 • Dudley Bierau until 12/31/17

119 Conservation Commission

- 120 • Karen Saltus until 12/31/18
- 121 • Earldean Wells until 12/31/18

122 Mary Safford Wildes Trust

- 123 • Jeffrey D. Thomson until 12/31/18

124 Shellfish Conservation Committee

- 125 • Daniel Clapp until 12/31/18
- 126 • Jean Treacy until 12/31/18

127 **A MOTION WAS MADE BY COUNCILOR WHITE TO RE-APPOINT THE**
128 **FOLLOWING MEMBERS TO BOARDS, COMMITTEES AND COMMISSIONS**
129 **EFFECTIVE 1/25/16, SECONDED BY COUNCILOR SPILLER.**

130 Vice Chairperson Denault did not feel comfortable with voting all the appointments together and
131 questioned the Mary Safford Wildes Trust procedures.

132 **A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO AMEND THE**
133 **MAIN MOTION TO SPLIT THE VOTINGS BY EACH COMMITTEE OR BOARD,**
134 **SECONDED BY COUNCILOR DENNETT.**

135 Councilor Lemont suggested separating the Mary Safford Wildes Trust from the main motion
136 rather by each board or committee.

137 **THE MOTION WAS AMENDED TO SEPARATE THE VOTING OF MARY SAFFORD**
138 **WILDES TRUST FROM THE REST OF THE BOARDS AND COMMITTEES. THE**
139 **MOTION PASSED BY A ROLL CALL VOTE 5/2/0, WITH COUNCILOR SPILLER**
140 **AND CHAIRPERSON BEERS OPPOSED.**

141 **THE MAIN MOTION AS AMENDED PASSED BY A UNANIMOUS ROLL CALL**
142 **VOTE 7/0/0.**

143 **A MOTION WAS MADE BY COUNCILOR WHITE TO RE-APPOINT JEFFREY**
144 **THOMSON TO THE MARY SAFFORD WILDES TRUST BOARD UNTIL 12/31/18,**
145 **SECONDED BY COUNCILOR SPILLER.**

146 Vice Chairperson Denault stated that once Councilor Thomson was appointed to the Council, his
147 citizen position on the Mary Safford Wildes Trust Board became vacated, thus it should not be a
148 reappointment application. Chairperson Beers clarified to Vice Chairperson Denault the Board
149 positions. Vice Chairperson Denault stated his opposition to the vote. Chairperson Beers clarified
150 that the issue of concern was the applicable ordinance at the time Councilor Thomson was
151 appointed to Council, not an individual issue. He explained the proper procedures for
152 appointment to the Board. Councilor Thomson provided a brief timeline of his appointments to
153 the Board and Council.

154 **A MOTION WAS MADE BY COUNCILOR DENNETT TO POSTPONE RE-**
155 **APPOINTMENT OF JEFFREY THOMSON TO THE MARY SAFFORD WILDES**
156 **TRUST BOARD UNTIL 12/31/18 TO THE FEBRUARY 1, 2016 REGULAR MEETING,**
157 **SECONDED BY VICE CHAIRPERSON DENAULT.**

158 **THE MOTION FAILED TO PASS BY A ROLL CALL VOTE 2/5/0, WITH COUNCILOR**
159 **SPILLER, COUNCILOR LEMONT, COUNCILOR THOMSON, COUNCILOR WHITE,**
160 **AND CHAIRPERSON BEERS OPPOSED.**

161 Chairperson Beers confirmed to Councilor Lemont that a Councilor may hold a citizen
162 representative position on the Board.

163 **THE MOTION PASSED BY A ROLL CALL VOTE 5/1/1, WITH VICE CHAIRPERSON**
164 **DENAULT OPPOSED AND COUNCILOR THOMSON ABSTAINING.**

165 b. (010216-7) The Kittery Town Council moves to appoint Eric Lemont to the KCC
166 Board of Directors effective 1/25/16 until 12/31/18.

167 **A MOTION WAS MADE BY COUNCILOR LEMONT TO APPOINT ERIC LEMONT**
168 **TO THE KCC BOARD OF DIRECTORS EFFECTIVE 1/25/16 UNTIL 12/31/18,**
169 **SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A UNANIMOUS**
170 **ROLL CALL VOTE 7/0/0.**

171 c. (010216-1) The Kittery Town Council moves to hear a presentation from the Police
172 Chief on a program called Operation Hope.

173 **A MOTION WAS MADE BY COUNCILOR SPILLER TO HEAR A PRESENTATION**
174 **FROM THE POLICE CHIEF ON A PROGRAM CALLED OPERATION HOPE,**
175 **SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A**
176 **UNANIMOUS VOICE VOTE 7/0/0.**

177 Chief Short provided a brief overview of the efforts to raise awareness of the heroin epidemic
178 through Operation Hope. Since October, over 100 people have been placed in recovery centers
179 across the U.S. He explained in detail the process for the program to provide services and
180 mentors for afflicted individuals.

181 Chairperson Beers highly commended the efforts of Operation Hope.

182 d. (010216-2) The Kittery Town Council moves to approve the Wood Island Life
183 Saving Station Repair, Maintenance and Use Agreement called "Agreement Two".

184 The Council reached consensus to open the floor for public comment prior to Council
185 deliberation.

186 Councilor Spiller expressed her concerns for the amount of time allotted for review of the two
187 draft agreements and requested to postpone until the next regular meeting.

188 **THE MOTION MADE IN THE JANUARY 11, 2016 TOWN COUNCIL MEETING TO**
189 **APPROVE THE WOOD ISLAND LIFE SAVING STATION REPAIR, MAINTENANCE**
190 **AND USE AGREEMENT CALLED "AGREEMENT TWO" RETURNED TO THE**
191 **FLOOR. THE MOTION WAS MADE BY VICE CHAIRPERSON DENAULT AND**
192 **SECONDED BY COUNCILOR WHITE.**

193 Ms. Colbert Puff provided a brief recap of the repair and concession agreement amendments and
194 various concerns regarding the period of performance of the agreements. She also highlighted the
195 issues in the compressed timeline for review by staff after the attorney's review. The Council
196 was asked to contact the National Parks Service on short notice for their review. She provided
197 the explanation of a concession agreement and clarified the purpose for a 20-year duration
198 period.

199 Mr. Duncan McEachern, Town Attorney, cited a written message from him that acknowledged
200 the efforts of WILSSA. He emphasized the importance of his duty to perform an unbiased review
201 for the two documents and the complexities in that process, especially attributed to the
202 interaction of the deed covenants. He provided a summary of his conclusions upon review of the
203 documents.

204 Mr. Sam Reid, President Wood Island Life Saving Station Association, provided a brief
205 overview of the project. He requested that the Council approve the two agreements. He
206 responded in detail to the corrections that Attorney McEachern identified previously that were
207 acceptable or not. It was additionally noted that both the U.S. Army Corps of Engineers and
208 Maine Department of Environmental Protection have approved the seawall, marine railway, and
209 pier. He raised concern that the financial security package was not clear regarding the funding to
210 be received from the State and National Parks Service.

211 Attorney McEachern noted that the period of performance was not clear as to whether it is based
212 on the building permit. Mr. Reed replied that the repair agreements would start in sequence with
213 the maintenance agreement. He noted instances in both agreements where conflicts were
214 identified.

215 The Chair opened the floor for public comment.

216 Deane Rykerson, 1 Salt Marsh Lane

217 Mr. Rykerson highlighted the importance of the construction to begin. It is critically important to
218 begin construction because of the severity of the existing conditions of the structure.

219 Ann Grinnell, 5 Stimson Street

220 Ms. Grinnell felt that the project will be a great asset to the community. She requested that the
221 Council honor Attorney McEachern and his efforts.

222 Leah Caswell, 65 Pepperrell Road

223 Ms. Caswell echoed previous statements made that the structure is in an urgent situation to be
224 preserved.

225 Attorney McEachern suggested that the Council use their best judgment.

226 Marcy Philbrook, 38 Love Lane

227 Ms. Philbrook felt that it is important to move forward with the repair agreement. She questioned
228 what the project would be like without a museum and urged the Council to support the
229 concession agreement. She noted that she has witnessed a great deal of positive support from the
230 community for this project.

231 Councilor White asked to clarify what specific document requires action given the motions made
232 in previous meetings.

233 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO AMEND THE MAIN**
234 **MOTION TO READ AS “APPROVE THE WOOD ISLAND LIFE SAVING STATION**
235 **REPAIR, MAINTENANCE AND USE AGREEMENT SO CALLED “COMPROMISE”**
236 **DATED JANUARY 19, 2016”, SECONDED BY COUNCILOR WHITE.**

237 **A MOTION WAS MADE BY COUNCILOR THOMSON TO POSTPONE THE**
238 **APPROVAL OF THE WOOD ISLAND LIFE SAVING STATION REPAIR,**
239 **MAINTENANCE AND USE AGREEMENT CALLED “AGREEMENT TWO” UNTIL**
240 **THE TOWN MANAGER INFORMS COUNCIL THAT THE SCOPE OF WORK**
241 **OUTLINED IN THE OCTOBER 18, 2013 REPAIR AGREEMENT IS IN THE OPINION**
242 **OF THE TOWN MANAGER AND APPROPRIATE TOWN STAFF IS**
243 **SUBSTANTIALLY COMPLETE, SECONDED BY COUNCILOR SPILLER.**

244 Councilor Thomson referenced the October 18, 2013 meeting to state that there was no
245 discussion for the need of an additional repair agreement and need for a concession agreement
246 before the work described in the original repair agreement would begin. He felt there are other
247 ways to preserve historic sites and emphasized that the original agreement should be performed.
248 Councilor Spiller agreed that Council supports the exterior restoration and that portion of the
249 project should move forward.

250 Vice Chairperson Denault stated his reasoning for supporting the motion to postpone.

251 Councilor Lemont felt that it is an appropriate time to act on the motion because of the amount of
252 time and effort already put forth.

253 Councilor White understood that the postponement would threaten the project. Performing the
254 original agreement would defund what has been obtained and stated his opposition to
255 postponement. He further explained that because the State is involved, changes to the material
256 structure have to be conducted in a particular way. Only the exterior would not comply with that.

257 **THE MOTION TO POSTPONE FAILED TO PASS BY A ROLL CALL VOTE 3/4/0,**
258 **WITH COUNCILORS WHITE, DENAULT, LEMONT, AND CHAIRPERSON BEERS**
259 **OPPOSED.**

260 The motion to amend to approve the document dated January 19, 2016 was open for discussion.

261 Councilor Dennett stated his opposition to the motion because of the potential risk that WILSSA
262 may unexpectedly require additional funds from the Town.

263 Chairperson Beers clarified to Councilor Spiller that the revisions suggested by Attorney
264 McEachern were expressed by Mr. Reid as included in the document and relates to policy
265 consideration, not legal observations.

266 Vice Chairperson Denault felt that Attorney McEachern's changes are either accepted or not.

267 Councilor White felt that he would have supported a workshop if there was more time, however,
268 the project needs to move forward given the condition of the building. He further stated his
269 reasoning to support the motion.

270 **THE MOTION TO AMEND THE MAIN MOTION PASSED BY A ROLL CALL VOTE**
271 **4/3/0, WITH COUNCILORS SPILLER, THOMSON, AND DENNETT OPPOSED.**

272 **THE MAIN MOTION PASSED BY A ROLL CALL VOTE 4/3/0, WITH COUNCILORS**
273 **SPILLER, THOMSON, AND DENNETT OPPOSED.**

274 e. (010216-3) The Kittery Town Council moves to approve the Concession Agreement
275 between the Town of Kittery and Wood Island Life Saving Station Association.

276 **A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO APPROVE THE**
277 **CONCESSION AGREEMENT BETWEEN THE TOWN OF KITTERY AND WOOD**
278 **ISLAND LIFE SAVING STATION ASSOCIATION, SECONDED BY COUNCILOR**
279 **LEMONT.**

280 Attorney McEachern referenced e-mail communication received from Elyse LaForest stating that
281 she is the Program Coordinator and it has to be reviewed by her. He further explained what the
282 language in the deed restrictions state, which requires approval from the Secretary of the Interior.
283 Chairperson Beers clarified that whether or not she is the delegated official from that Department
284 is not to be a determination deliberated by Council. The document is required to be submitted
285 and approved by the Department of the Interior and the Council can approve contingent on their
286 approval.

287 Attorney McEachern raised a concern for the term of the concession. He stated in his evaluation
288 that a 5-year term with successive 5-year renewal terms therein forward is not incorporated into
289 the agreement.

290 Mr. Reed did not feel the approval should be contingent upon the Department of the Interior's
291 approval. The National Parks Service have already provided funding to WILSSA to restore the
292 building and clearly have demonstrated an interest to preserve the site.

293 Mr. Reed felt the language proposed for the 5-year term length was not appropriate. The 20-year
294 agreement is the duration of the required improvements to be made.

295 **A MOTION WAS MADE BY COUNCILOR DENNETT TO AMEND THE**
296 **CONCESSION AGREEMENT TO INCLUDE THE PROVISION OF GOVERNING**
297 **LAW AS STATED IN THE REPAIR AND MAINTENANCE AGREEMENT AND A**
298 **SEVERABILITY OF PROVISIONS CLAUSE, SECONDED BY CHAIRPERSON**
299 **BEERS. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.**

300 **A MOTION WAS MADE BY CHAIRPERSON BEERS TO AMEND THE CONCESSION**
301 **AGREEMENT TO READ WHEREAS THE SECRETARY OF THE INTERIOR MUST**
302 **PROVIDE WRITTEN CONCURRENCE TO THIS CONCESSION AGREEMENT,**
303 **SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A**
304 **UNANIMOUS ROLL CALL VOTE 7/0/0.**

305 **A MOTION WAS MADE BY COUNCILOR WHITE TO AMEND THE MAIN MOTION**
306 **TO REFER TO THE SO-CALLED COMPROMISE AGREEMENT DATED JANUARY**
307 **19, 2016, SECONDED BY COUNCILOR LEMONT. THE MOTION PASSED BY A**
308 **ROLL CALL VOTE 5/2/0, WITH COUNCILORS THOMSON AND DENNETT**
309 **OPPOSED.**

310 Councilor White questioned whether the issues in the concession agreement could be addressed
311 in a workshop before final action. Councilor Spiller supported that notion. Vice Chairperson
312 Denault felt that it is not an appropriate time to postpone the action. Councilor Thomson thought
313 it would be beneficial to have a workshop. Chairperson Beers stated his opposition to postpone
314 action as the document could be reviewed at any time.

315 **THE MOTION PASSED BY A ROLL CALL VOTE 4/3/0, WITH COUNCILORS**
316 **SPILLER, DENNETT, AND THOMSON OPPOSED.**

317 Councilor Dennett requested that a document be provided to summarize the actions made
318 regarding the agreements.

319 **A MOTION WAS MADE BY COUNCILOR WHITE TO EXTEND THE MEETING**
320 **TIME TO EXPIRE NO LATER THAN 10:30 P.M., SECONDED BY COUNCILOR**
321 **DENNETT. THE MOTION PASSED BY A VOICE VOTE OF 6/1/0, WITH**
322 **COUNCILOR LEMONT OPPOSED.**

323 10. PUBLIC HEARINGS – None.

324 11. DISCUSSION

325 a. Discussion by members of the public (three minutes per person)

326 Jim Forbes, 31 Mill Pond Road

327 Mr. Forbes felt that the Council should consider the advice of the Town Attorney. He felt that the
328 opportunity should have been given to the Attorney and WILSSA to propose an agreement that
329 had mutual consensus.

330 b. Response to public comment directed to a particular Councilor – None.

331 c. Chairperson's response to public comments

332 Mr. Forbes – The intent was to formulate a document between the Town and Wood Island Life
333 Saving Station, however, there was a failure to reach consensus.

334 12. UNFINISHED BUSINESS – None.

335 13. NEW BUSINESS

336 a. (010216-3) Donations/gifts received for Council disposition

The Kittery Town Council moves to accept donations from St. Mary's Submarine Museum, Inc. in the amount of \$350 and Kenneth Myron Bonnell in the amount of \$20, to be deposited in account # 5007-43600 Thresher Memorial.

A MOTION WAS MADE BY COUNCILOR SPILLER TO ACCEPT DONATIONS FROM ST. MARY'S SUBMARINE MUSEUM, INC. IN THE AMOUNT OF \$350 AND KENNETH MYRON BONNELL IN THE AMOUNT OF \$20, TO BE DEPOSITED IN ACCOUNT # 5007-43600 THRESHER MEMORIAL, SECONDED BY COUNCILOR THOMSON. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 7/0/0.

b. (010216-4) The Kittery Town Council moves to approve the disbursement warrants.

Town accounts payable of \$87,599.84.
Sewer account payable of \$15,003.37
School accounts payable of \$71,635.88.
Total of all disbursement warrants of \$174,239.09.

Councilor Dennett stated that the Town and Sewer warrants were in due form. Councilor Lemont that the School warrants were in due form.

A MOTION WAS MADE BY CHAIRPERSON THOMSON TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.

c. (010216-5) The Kittery Town Council moves to approve the five town-wide Sidewalk Sales Events for 2016, as requested by the Kittery Outlet Association.

A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE FIVE TOWN-WIDE SIDEWALK SALES EVENTS FOR 2016, AS REQUESTED BY THE KITTERY OUTLET ASSOCIATION, SECONDED BY COUNCILOR SPILLER. THE MOTION PASSED BY A ROLL CALL VOTE 7/0/0.

d. (010216-6) The Kittery Town Council moves to ratify and sign a three year labor contract from July 1, 2014 thru June 30, 2017, for the Police Officers unit.

A MOTION WAS MADE BY VICE CHAIRPERSON DENAULT TO RATIFY AND SIGN A THREE YEAR LABOR CONTRACT FROM JULY 1, 2014 THRU JUNE 30, 2017, FOR THE POLICE OFFICERS UNIT, SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT OPPOSED.

e. (010216-7) The Kittery Town Council moves to adopt its goals for 2016.

A MOTION WAS MADE BY COUNCILOR THOMSON TO ADOPT ITS GOALS FOR 2016, SECONDED BY COUNCILOR WHITE. THE MOTION PASSED BY A ROLL CALL VOTE 6/1/0 WITH COUNCILOR DENNETT OPPOSED.

14. COUNCILOR ISSUES AND COMMENTS

Councilor Thomson recognized former Captain William D. McDonough Jr. who passed on January 11, 2016. He was a retired US Navy officer, a strong advocate for the PNSY, and a

376 wonderful citizen of Kittery. Chairperson Beers echoed that statement and added that he
377 spearheaded the Thresher Memorial project.

378 Vice Chairperson Denault stated that the donation box for End 68 Hours of Hunger is located in
379 the Town Hall entrance.

380 Vice Chairperson Denault recognized those that have recently passed as follows:

- 381 • Wayne S. Price
- 382 • Capt William McDonough
- 383 • Elaine Marie Clough
- 384 • Ruth E. O'Brien
- 385 • Betty A. McGuire

386 15. COMMITTEE AND OTHER REPORTS

387 a. Communications from the Chairperson – None.

388 b. Committee Reports – None.

389 Councilor White stated that the Comprehensive Plan Update Committee held its second meeting.
390 The first public forum will be held on Saturday, March 12, 2016 at the Kittery Community
391 Center from 10:00am – 12:30pm.

392 16. EXECUTIVE SESSION – None.

393 17. ADJOURNMENT

394 **A MOTION WAS MADE BY COUNCILOR SPILLER TO ADJOURN THE MEETING**
395 **AT 10:08 P.M., SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION**
396 **PASSED BY A UNANIMOUS VOICE VOTE 7/0/0.**

397 Submitted by Marissa Day, Minutes Recorder, on December 30, 2016.

398 *Disclaimer: The following minutes constitute the author's understanding of the meeting. While*
399 *every effort has been made to ensure the accuracy of the information the minutes are not intended*
400 *as a verbatim transcript of comments at the meeting, but a summary of the discussion and*
401 *actions that took place. For complete details, please refer to the video of the meeting on the*
402 *Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*

1. Call to Order

Chairperson Beers called the meeting to order at 7:00 p.m.

2. Introductory

Chairperson Beers read the introductory.

3. Pledge of Allegiance

Chairperson Beers led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll call were Chairperson Gary Beers, Vice Chairperson Charles Denault, Councilors Frank Dennett, Jeffrey Pelletier, Kenneth Lemont, and Jeffrey Thomson.

Absent from the roll call was Judith Spiller.

5. Agenda Amendment and Adoption

One spelling error was corrected and the agenda was adopted, as amended.

6. Town Manager's Report

Town Manager Amaral reviewed her written report.

Sewer Assessments – The updated sewer betterment assessment accounts summary was provided. A notification was sent regarding the December 19th deadline to connect and to enter into a payment plan. The deadline was advertised in the Portsmouth Herald, Channel 22 bulletin, Twitter account, and the Town website. Those owners that have not paid, entered into a payment plan, or received an assessment deferral, will receive a bill for the full amount of the betterment assessment in March of 2017.

There are three hearings pending decision of which two are scheduled for the January 9, 2017 regular meeting. The other hearing is waiting for the applicant to provide additional information to the Assessor.

There are three applications for arbitration and two of which are scheduled for a hearing. The Town Clerk has been coordinating the necessary information and communication with the arbitration panelists selected to support that process.

Open Positions – Betsy Oulton, Human Resources Manager, has submitted her resignation effective January 5th. She has accepted another opportunity closer to her home of residence. Her dedicated service and efforts were recognized.

The Finance Director position remains vacant and is aimed to be filled by the end of January.

Coastal Cleanup ZipTies – The Harbormaster is going to work on educational material and distribute it during the season to try and address ZipTies are being disposed of in a proper manner.

Dineen Court Order – Judge Fritzsche issued a bench warrant for Mr. Dineen’s arrest since his court order was not complied with. The KPD and York Police have been working diligently to find him and it is thought that he may not be in the State. A hearing date with the Maine Supreme Court for the Mary’s Store appeal has not yet been scheduled.

Storm Drain on US Route 1 – The storm drain issues were taken care of by DPW.

Signage Along US Route 1 Wally’s Farm Stand – The sign was inspected by CEO Bob Marchi. After reviewing the permit issued for the signage, he determined that it does meet the Code and the requirements put on it for the permit.

Identification for Harbormaster – All staff that access private property should have identification that demonstrates they are an employee. The Police Department is in the process of developing a template for general use.

Whipple Road Improvements – Staff met with the engineers of the project. They are working with CMP to review and revise the utility pole relocations. Once that is complete, MDOT will begin the Right-of-Way process, which generally takes nine months. Then, it will be ready for bidding and the construction is aimed to begin in 2018. The State is paying for 80% of the costs.

Councilor Spiller asked for a response to the previous requests made for bike friendly curbing.

7. Acceptance of Previous Minutes

Regular Meeting – December 12, 2016

Councilor Lemont abstained from voting on the minutes. The minutes were adopted, as presented.

8. Interviews for the Board of Appeals and Planning – None.

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials. – None.

10. PUBLIC HEARINGS

a. (120216-1) The Kittery Town Council moves to hold a public hearing on an application from Woodland Farms Brewery LLC, 1 Rowans Way, Kittery ME for a Victualer’s License for Woodland Farms Brewery, 306 US Route 1, Suite C.

Notice of this public hearing was posted on December 16, 2016 and required by Title 30-A M.R.S §3812 for their Food Service License.

Chairperson Beers opened the floor for public comment. Hearing none; Chairperson Beers closed the public hearing.

A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE APPLICATION FROM WOODLAND FARMS BREWERY LLC, 1 ROWANS WAY, KITTERY ME FOR A VICTUALER’S LICENSE FOR WOODLAND FARMS BREWERY, 306 US ROUTE 1, SUITE C, SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/0.

11. DISCUSSION

71 a. Discussion by members of the public (three minutes per person)

72 Brian Early, Rogers Road

73 Mr. Early stated he will no longer be reporting in Kittery and has enjoyed his time while
74 covering the Town.

75 David Lincoln, 100 Shepard's Cove Road #307

76 Mr. Lincoln questioned the reasoning for the Town's expressed interest for a moratorium. He
77 stated how many municipalities have approved or considered one. He also questioned the status
78 of the situation regarding the Rice Library.

79 Milton Hall, 27 Old Ferry Lane

80 Mr. Hall clarified statements made in the previous Council and KPA workshop regarding agent
81 fees and the Frisbee Wharf. He questioned whether the moorings at PNSY carry valid
82 registrations. He suggested that the Town attorney be consulted regarding the agreement.

83 b. Response to public comment directed to a particular Councilor – None.

84 c. Chairperson's response to public comments

85 Mr. Early – He wished him well and stated appreciation for his work on behalf of Kittery.

86 Mr. Lincoln – He deferred to Town Manager Amaral to provide a response in regards to the
87 moratorium. Town Manager Amaral explained that a drafted moratorium ordinance will be
88 presented to Council at the Planning Board workshop on January 9, 2017. The discussion will
89 also consist of how retail use would be regulated. Chairperson Beers noted that further
90 information regarding costs and zoning for the Rice Library will be presented to Council once
91 ready.

92 Mr. Hall – He thanked Mr. Hall for clarifying the agent fees and noted the other observations
93 will be addressed between the Town Manager and Chair of the Kittery Port Authority.

94 12. UNFINISHED BUSINESS – None.

95 13. NEW BUSINESS

96 a. Donations/gifts received for Council disposition

97 (120216-2) The Kittery Town Council moves to accept a donation from James and
98 Elizabeth Gamble in the amount of \$1,000.00 to be deposited in account # 2063001-4360 Eyes
99 of the World.

100 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ACCEPT A DONATION**
101 **FROM JAMES AND ELIZABETH GAMBLE IN THE AMOUNT OF \$1,000.00 TO BE**
102 **DEPOSITED IN ACCOUNT # 2063001-4360 EYES OF THE WORLD, SECONDED BY**
103 **COUNCILOR PELLETIER. THE MOTION PASSED BY A UNANIMOUS VOICE**
104 **VOTE 6/0/0.**

105 (120216-3) The Kittery Town Council moves to accept a donation from York Hospital
106 in the amount of \$9,250.00 to be deposited in account #5003-4360 York Hospital Scholarship.

107 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ACCEPT A DONATION**

108 FROM YORK HOSPITAL IN THE AMOUNT OF \$9,250.00 TO BE DEPOSITED IN
109 ACCOUNT #5003-4360 YORK HOSPITAL SCHOLARSHIP, SECONDED BY VICE
110 CHAIRPERSON DENAULT. THE MOTION PASSED BY A UNANIMOUS VOICE
111 VOTE 6/0/0.

112 (120216-4) The Kittery Town Council moves to accept a donation from the
113 Meetinghouse Village in the amount of \$100.00 to be deposited in account #2063001-43600
114 Kittery Community Center.

115 A MOTION WAS MADE BY COUNCILOR THOMSON TO ACCEPT A DONATION
116 FROM THE MEETINGHOUSE VILLAGE IN THE AMOUNT OF \$100.00 TO BE
117 DEPOSITED IN ACCOUNT #2063001-43600 KITTEY COMMUNITY CENTER,
118 SECONDED BY COUNCILOR PELLETIER. THE MOTION PASSED BY A
119 UNANIMOUS VOICE VOTE 6/0/0.

120 (120216-5) The Kittery Town Council moves to accept donations from Donald and
121 Nicole Kerr \$60.00, Duncan and Patricia McEachern \$90.00 and Elizabeth Desjardins \$210.00 to
122 be deposited in account # 5007-43600 Thresher Memorial Fund.

123 A MOTION WAS MADE BY COUNCILOR THOMSON TO ACCEPT DONATIONS
124 FROM DONALD AND NICOLE KERR \$60.00, DUNCAN AND PATRICIA
125 MCEACHERN \$90.00 AND ELIZABETH DESJARDINS \$210.00 TO BE DEPOSITED IN
126 ACCOUNT # 5007-43600 THRESHER MEMORIAL FUND, SECONDED BY VICE
127 CHAIRPERSON DENAULT. THE MOTION PASSED BY A UNANIMOUS VOICE
128 VOTE 6/0/0.

129 b. (120216-6) The Kittery Town Council moves to approve the disbursement warrants.

130 Town accounts payable of \$518,064.01.
131 Town accounts payable of \$9,669.00.
132 Sewer account payable of \$13,203.75.
133 Sewer account payable of \$1,172,320.81.
134 School accounts payable of \$118,965.25.
135 Total of all disbursement warrants of \$1,832,222.82.

136
137 Chairperson Beers stated that the Town and Sewer warrants are in due form. Councilor Pelletier
138 that the School warrants are in due form.

139 A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE THE
140 DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR PELLETIER. THE
141 MOTION PASSED BY A UNANIMOUS VOICE VOTE 6/0/0.

142 c. (120216-7) The Kittery Town Council moves to approve an application from
143 Woodland Farms Brewery LLC, 1 Rowans Way, Kittery, ME for a Malt Liquor License for
144 Woodland Farms Brewery, 306 US Route 1, Suite C.

145 A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE AN
146 APPLICATION FROM WOODLAND FARMS BREWERY LLC, 1 ROWANS WAY,
147 KITTEY, ME FOR A MALT LIQUOR LICENSE FOR WOODLAND FARMS
148 BREWERY, 306 US ROUTE 1, SUITE C, SECONDED BY COUNCILOR PELLETIER.

149 Ms. Maryann Place, Town Clerk, clarified to Councilor Dennett that another application will be
150 submitted and placed on the next regular meeting agenda for Council approval of a Special
151 Amusement Permit.

152 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/0.**

153 d. (120216-8) The Kittery Town Council moves to approve a renewal application from
154 Tasty Thai, Inc., 599 Lafayette Road #6, Portsmouth NH for a Malt, Spirituous and Vinous
155 Liquor License for Tasty Thai, 182 State Road.

156 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE A RENEWAL**
157 **APPLICATION FROM TASTY THAI, INC., 599 LAFAYETTE ROAD #6,**
158 **PORTSMOUTH NH FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE**
159 **FOR TASTY THAI, 182 STATE ROAD, SECONDED BY COUNCILOR PELLETIER.**

160 Ms. Place clarified to Councilor Dennett that the applicant held a ME license last year.

161 **THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/0.**

162 e. (120216-9) The Kittery Town Council moves to approve a renewal application from
163 The Ares LLC, 68 Wallingford Square, Kittery, ME for a Malt, Spirituous and Vinous Liquor
164 License for AJ's Wood Grill Pizza, 68 Wallingford Square.

165 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE A RENEWAL**
166 **APPLICATION FROM THE ARES LLC, 68 WALLINGFORD SQUARE, KITTERY,**
167 **ME FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR AJ'S WOOD**
168 **GRILL PIZZA, 68 WALLINGFORD SQUARE, SECONDED BY COUNCILOR**
169 **PELLETIER. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/0.**

170 f. (120216-10) The Kittery Town Council moves to approve a renewal application from
171 Weathervane Seafoods, Inc., 306 US Route 1, Kittery, ME for a Malt, Spirituous and Vinous
172 Liquor License for Weathervane Seafoods, 306 US Route 1.

173 **A MOTION WAS MADE BY COUNCILOR THOMSON TO APPROVE A RENEWAL**
174 **APPLICATION FROM WEATHERVANE SEAFOODS, INC., 306 US ROUTE 1,**
175 **KITTERY, ME FOR A MALT, SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR**
176 **WEATHERVANE SEAFOODS, 306 US ROUTE 1, SECONDED BY COUNCILOR**
177 **PELLETIER. THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE 6/0/0.**

178 g. (120216-11) The Kittery Town Council moves to appoint a representative to meet with
179 the Chair of the Conservation Commission to interview Donald Moore for his re-appointment to
180 that board until 12/31/19.

181 **A MOTION WAS MADE BY COUNCILOR THOMSON TO RE-APPOINT DONALD**
182 **MOORE TO THE CONSERVATION COMMISSION WITHOUT BENEFIT OF AN**
183 **INTERVIEW, SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION**
184 **PASSED BY A ROLL CALL VOTE 5/0/1 WITH CHAIRPERSON BEERS**
185 **ABSTAINING.**

186 a. (120216-12) The Kittery Town Council moves to amend the Economic Development
187 charge to remove the sunset date.

188 Mr. Tom Emerson, 10 Ox Point Drive, explained how removing the sunset date on the Economic
189 Development Committee will help them carry out implementation of the Comprehensive Plan
190 and other value-added activities. Town Manager Amaral stated her support for continuing the
191 Committee since economic development is an ongoing process. She does not necessarily agree
192 with the need for a Town position dedicated to economic development, but did feel there needs
193 to be more efforts and resources to achieve economic development in the areas where growth is
194 desired.

195 **A MOTION WAS MADE BY COUNCILOR THOMSON TO AMEND THE ECONOMIC**
196 **DEVELOPMENT CHARGE TO REMOVE THE SUNSET DATE, SECONDED BY VICE**
197 **CHAIRPERSON DENAULT. THE MOTION PASSED BY A UNANIMOUS ROLL**
198 **CALL VOTE 6/0/0.**

199 The Council requested that the Economic Development Committee present a written report on
200 the 12th of the month each year.

201 a. (120216-13) The Kittery Town Council moves to schedule a public hearing for
202 January 09, 2017 to amend Title 2 of the Kittery Town Code to add Harbormaster position.

203 **A MOTION WAS MADE BY COUNCILOR THOMSON TO SCHEDULE A PUBLIC**
204 **HEARING FOR JANUARY 09, 2017 TO AMEND TITLE 2 OF THE KITTEY TOWN**
205 **CODE TO ADD HARBORMASTER POSITION, SECONDED BY VICE**
206 **CHAIRPERSON DENAULT. THE MOTION PASSED BY A VOICE VOTE 5/0/1 WITH**
207 **CHAIRPERSON BEERS ABSTAINING.**

208 2. COUNCILOR ISSUES OR COMMENTS

209 Councilor Thomson thanked Town Manager Amaral for compiling the information related to the
210 Resource Recovery Center. He expressed concerns for the amount of expired automobile
211 registration stickers have been seen at the Resource Recovery Center.

212 Vice Chairperson Denault spoke about signage at Seapoint Road that he mentioned in the
213 previous meeting. Based on discussions with the owner, the signage cannot be posted per the
214 Ordinance.

215 Vice Chairperson Denault recognized those that have recently passed as follows:

- 216 • Robert Cejka Sr.
- 217 • William L. Watson
- 218 • Richard John Smykowski
- 219 • John Crawford Hackney
- 220 • Robert W. "Bob" Young
- 221 • Edward O. "Eddie" "Ed" Barsalou
- 222 • Betty J. Chapman
- 223 • Mary E. (Goodwin) Thompson
- 224 • Rose E. (Dumont) Corliss
- 225 • Donald ("Donnie") Joseph Camden
- 226 • Jean O'Neil
- 227 • Edith Francis Meyer
- 228 • Irene L. (Sztucinski) Bellantoni

- 229 • Linda A. Dwyer-Hopfgarten
230 • Mary K. Murray
231 • Wilfred J. Fallon

232 3. COMMITTEE AND OTHER REPORTS

233 a. Communications from the Chairperson – None.

234 b. Committee Reports

235 Councilor Thomson asked if there will be a budget meeting with the School Committee.

236 Chairperson Beers asked Town Manager to discuss further with Superintendent, Allyn Hutton.

237 4. EXECUTIVE SESSION – None.

238 5. ADJOURNMENT

239 **A MOTION WAS MADE BY COUNCILOR THOMSON TO ADJOURN THE MEETING**
240 **AT 7:36 P.M., SECONDED BY VICE CHAIRPERSON DENAULT. THE MOTION**
241 **PASSED BY A UNANIMOUS VOICE VOTE 6/0/0.**

242 Submitted by Marissa Day, Minutes Recorder, on January 2, 2017.

243 *Disclaimer: The following minutes constitute the author's understanding of the meeting. While*
244 *every effort has been made to ensure the accuracy of the information the minutes are not intended*
245 *as a verbatim transcript of comments at the meeting, but a summary of the discussion and*
246 *actions that took place. For complete details, please refer to the video of the meeting on the*
247 *Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*



TOWN OF KITTERY
P. O. Box 808
Kittery, ME 03904
207-439-0452

APPLICATION FOR SPECIAL ACTIVITY/AMUSEMENT PERMIT
(Pursuant to 28-A M.R.S.A. Sec. 1054)

Name, address and legal status of individual(s) or entity seeking to hold permit:

WOODLAND FARMS BREWERY, LLC

1 ROWANS WAY, KITTERY ME 03904

Name and mailing address of the premises where the special activity/amusement will occur:

306 US ROUTE 1, KITTERY ME 03904, 439-0355

Mailing address and telephone number of owner of the real estate:

WEATHERMAN SEAFOODS, 306 US ROUTE ONE KITTERY ME

Describe the specific portion of the premises where the special activity/amusement will occur:

FRONT WINDOW AREA TO THE LEFT OF THE ENTRANCE

Set forth the specific time periods between which the special activity/amusement will occur:

6pm- 8pm Friday + SATURDAYS

Describe the specific activity or type of amusement for which the permit is requested:

Acoustic + Folk music

Has any individual(s), partner(s), majority shareholder(s) of the business entity, seeking to hold this permit, been convicted of a felony or had any similar type of amusement or activity permit been denied or revoked within the past ten (10) years by any other municipal or state authority, agency or board? If so, give the state of conviction for any felony and describe specifically the circumstances of any such denial or revocation giving the state or city and date of such denial or revocation:

NO

Give any additional information to support your request for the permit sought herein:

As part of this application process, the individual or business entity seeking the permit herein acknowledges that the Municipal Officers, pursuant to 28-A M.R.S.A. Subsection 1054(7) may suspend or revoke the permit applied for herein on the grounds that the activity or amusement constitutes a detriment to the public health, safety or welfare, or violates municipal ordinances or regulations.

Give the authority and legal relationship of the applicant signing below to the entity seeking permit:

Patrick Rowan

NOTE: In granting this permit, the Town relies on the accuracy and truth of the facts represented herein. Any misleading or incorrect information set forth in this application shall be grounds for denial or immediate revocation of the permit issued. By signing this application, the applicant represents the truth of the facts herein stated.

DATE OF APPLICATION: 12/28/16

SIGNATURE OF APPLICANT: Patrick Rowan

ADDRESS: 1 Rowans Way Kittery ME 03901

TELEPHONE NUMBER: 603 866 1938

**FEE: \$20.00 per year (Please make check payable to "Town of Kittery")
Must be renewed annually**

PLEASE SUBMIT THIS FORM AND APPROPRIATE FEE TO THE TOWN CLERK'S
OFFICE, P.O. BOX 808, KITTERY, ME 03904



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: January 9, 2017
From: Kendra Amaral, Town Manager
Subject: Kittery Port Authority Relationship
Councilor Sponsor: Chairperson Gary Beers

EXECUTIVE SUMMARY

The Kittery Port Authority and the town are seeking to provide structure to the Harbormaster position and the administrative support functions provided to the KPA through the town. Attached are the proposed Inter Municipal Agreement (IMA), Title 2 amendment, and Town Classification Policy amendment, which constitute the required components of the structured arrangement.

STATEMENT OF NEED

For the purposes of efficiency and cost savings the town and KPA need to work cooperatively to administer the function of Harbormaster. Incorporating the Harbormaster into the town's personnel structure provides much needed support for the administrative employment requirements of the position, including benefits management, personnel administration, and workers' compensation insurance coverage.

To codify and implement the cooperative relationship the following are needed:

- Inter Municipal Agreement by and between the Town of Kittery and the Kittery Port Authority
- Establishment of the Harbormaster position in Title 2
- Establishment of the Harbormaster job description in the town's Classification policy

FACTS BEARING ON THE EQUATION

The IMA and the Harbormaster job description have been reviewed and revised by the KPA and the Town Council. The Personnel Board has reviewed and approved the Harbormaster job description.

The IMA is for a three-year period.

PROPOSED SOLUTION/RECOMMENDATION

Adopt the IMA, Title 2 amendment, and Classification Policy amendment as proposed.

Chapter 2.4 PERSONNEL POSITIONS ESTABLISHED

Article I. Administration

2.4.1.11 Harbormaster

Purpose of Position: The purpose of this position is to oversee and direct all day-to-day activities of the Town-owned marine facilities, and to patrol waters under the jurisdiction of the Kittery Port Authority. This position is directed by the Chairperson of the Kittery Port Authority or designee and operates under the general oversight of the Kittery Town Manager. Duties include, but are not limited to: management of the operating budget; supervision of staff; collection of various fees; ensuring compliance with all federal, state, and local ordinances applicable to the harbor, and KPA rules and regulations; permitting and placement of moorings, preparation and submission of reports; maintenance of various data bases and websites; attendance at meetings; and performance of additional tasks as directed by the Kittery Port Authority and the Kittery Town Manager.

Chapter 2.5 COMPENSATION

Position

2.4.1.11 Harbormaster

Established By

Council

1 **AN ORDINANCE** related to the amendment of Title 2 to establish the Harbormaster position.

2
3 **WHEREAS,** The Kittery Town Council is authorized to enact this Ordinance, as specified in
4 Section 2.07 (3) and Section 2.07 (4) of the Town Charter and 30-A M.R.S. subsection 3001,
5 pursuant to its powers that authorize the town, under certain circumstances, to provide for the
6 public health, safety, morals, and welfare, not intending for Ordinance to conflict with any existing
7 state or federal laws; and

8
9 **WHEREAS,** The Town of Kittery wishes to establish the position of Harbormaster to oversee and
10 direct all day-to-day activities of the Town-owned marine facilities and to patrol the waters under the
11 jurisdiction of the Kittery Port Authority and other duties; and

12
13 **WHEREAS,** the position of Harbormaster will be incorporated into the Town of Kittery's
14 Personnel System; and

15
16 **NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A, M.R.S. SUBSECTION**
17 **3001, AND THE TOWN CHARTER SECTIONS 2.07 (3) AND 2.07 (4):**

18
19 **THE KITTERY TOWN COUNCIL HEREBY ORDAINS THE CREATION OF THE**
20 **HARBORMASTER POSITION AND THE ESTABLISHMENT OF TITLE 2.4.1.11**
21 **HARBORMASTER AS PROPOSED AND AMEND TITLE 2.5 AS PROPOSED.**
22

12/8/16

Janice,

This is an anonymous donation
to be used for the pre-school.

Thank you,


Kaun

KCC
Acc #
2063 43606


342
55-136/312
122

December 28, 2016
Date

Pay to the Order of Kittery Community Center \$200.00
Two Hundred and 00/100 Dollars

 **TD Bank**
America's Most Convenient Bank®

For donation

 Photo Safe Deposit Details on back

INTER-MUNICIPAL AGREEMENT

Between the



TOWN of KITTERY

and the



KITTERY PORT AUTHORITY

for

HARBORMASTER EMPLOYMENT

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ATTACHMENT A: Kittery Town Code Title 2, Position Establishment pursuant to Town Charter

ATTACHMENT B: Town of Kittery Personnel Classification Policy - Harbormaster Job Description

INTER-MUNICIPAL AGREEMENT
between the TOWN of KITTERY and the KITTERY PORT AUTHORITY
for HARBORMASTER EMPLOYMENT

This Inter-Municipal Agreement (“IMA” or “Agreement”) is made and entered into this _____ day of _____, 2017, by and between the Kittery Port Authority, (“KPA”), and the Town of Kittery, Maine, (“Kittery or Town”), collectively “the Parties”.

WITNESSETH

WHEREAS, the Town of Kittery, a municipality of the State of Maine within the limits as now established or as hereafter established in the manner provided by law in its Town Charter, is a body politic and corporate; and

WHEREAS, the Kittery Port Authority was established as enacted in 1961 Private & Special Law Chapter 163, as amended; and, pursuant to 30-A MRS §2351, is a quasi-municipal corporation that includes a portion of a municipality, created by law to deliver public services but which is not a general purpose governmental unit; and

WHEREAS, the Parties may, pursuant to 30-A MRS §2201, make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby to provide services and facilities within the State in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of communities; and

WHEREAS, as enacted in 1961 Private & Special Law Chapter 163, as amended, KPA, is authorized and empowered to appoint and compensate a harbor master; and

WHEREAS, the KPA, duly acting through its Board members, is authorized to enter into an agreement with the Town, duly acting through the Town Council, for the purpose of employing a Kittery Harbormaster; and

WHEREAS, the Town deems it to be in the public interest to enter into an agreement with KPA whereby the Town would ordain within the provisions of its Town Charter to establish a municipal position addressing obligations for a Harbormaster; and

WHEREAS, the Parties are desirous of acquiring benefit to their finances and operations and to the person of an appointed Harbormaster;

NOW, THEREFORE, in consideration of these premises and mutual benefits to be derived by the Parties hereto,

IT IS AGREED as follows:

ARTICLE 1. DEFINITIONS

For the purpose of this Inter-Municipal Agreement (IMA), the following terms are defined:

KPA's Service Area is limited to the port, harbor, and navigable tidal waters, within the jurisdiction of the Town of Kittery.

Operating Costs means the costs incurred by the Town necessary for the proper and efficient operation and maintenance of the Harbormaster's duties and responsibilities.

Capital Costs means the costs incurred by the Town necessary for the proper and efficient operation and maintenance of the Port Authority Fixed Assets as defined in the Town's Capital Improvement Program.

ARTICLE 2. SCOPE and TERM of CONTRACT

2.1 Subject to the terms herein set forth, the Town shall ordain and establish a Harbormaster position with Department Head status in Town Code Title 2, Administration and Personnel, pursuant to Town Charter Section §3.04(10); and, provide for a position job description in its Personnel Classification policy.

2.2 The Harbormaster will be accorded employee compensation and benefits, be subject to Town Code, policies and procedures, as set forth in Title 2.

2.3 The Harbormaster shall report to the KPA Chairperson for the essential functions of the position and be under supervision of the Town Manager for administrative functions as defined in Article 3 of this agreement.

2.4 The Town Manager is privy to the interviewing of candidates for Harbormaster but does not have a vote on the hiring of a harbormaster. The Town Manager will participate in the performance review process for the Harbormaster.

2.5 The provisions of this Agreement commence with the effective date of this Agreement and continue for three (3) years, after which time it will continue for subsequent five (5) year periods unless and until this Agreement is either terminated or renegotiated by the Parties under the terms of Articles 9, 10, 11, or 12, below.

2.6 The Town and KPA shall review the Agreement two (2) years following the effective date or sooner if agreed upon by the Parties of this Agreement.

ARTICLE 3. TECHNICAL PROVISIONS

The Town will support the KPA and Harbormaster position through:

Recruitment: advertise job postings, source candidates, and coordinate hiring efforts with the KPA Chairperson for making the final selection of candidates.

Safety: support workplace safety training and maintain federally mandated logs for workplace injury and fatality reporting and manage any workers' compensation issues.

Employee Relations: strengthening the employer-employee relationship through measuring job satisfaction, employee engagement and resolving workplace conflict.

Compensation and Benefits: evaluating competitive pay practices; negotiate group health coverage rates with insurers and coordinate activities with the retirement savings fund administrator; paid-time-off tracking and management; management of personnel files; payroll; and other employer functions in accordance with federal and state law, the Town Charter, Town Code, and Town policies and procedures.

Compliance: resolution of workplace complaints based on unfair employment practices, unsafe working conditions and general dissatisfaction with working conditions that can affect productivity pursuant to federal and state employment laws such as Title VII of the Civil Rights Act, the Fair Labor Standards Act, the National Labor Relations Act and many other rules and regulations.

Training and Development: orientation training to help new hires transition into a new organizational culture; and as may be authorized by KPA, leadership training and professional development.

ARTICLE 4. COST ALLOCATION

4.1 The cost of employing the Harbormaster is to be allocated in the Port Authority line items of the Town budget as may be approved by the Town Council, annually.

4.2 The Town shall continue to address the maintenance, repair, replacement, improvement, or acquisition of capital assets necessary for Port Authority operations through the Town's established Capital Improvement Program.

ARTICLE 5. PAYMENT

Revenues generated by the Port Authority operations will continue to be remitted to the Town. The Town and KPA shall develop annual budgets and capital improvement projects with an objective to raise an amount equal to or greater than its annual operating budget. Annual KPA revenue in excess of approved budgetary expense is to be dedicated to the Town's capital program accounts for Harbormaster related facilities, equipment, and watercraft.

ARTICLE 6. COMMUNICATIONS BETWEEN the PARTIES

6.1 Notices and communications related to this Agreement hereunder must be in writing and be personally delivered or mailed by certified mail, return receipt requested, or by confirmed facsimile/e-mail transmission to the Town or KPA, as the case may be, at the following addresses:

Town of Kittery
200 Rogers Road
Kittery, ME 03904
Attn: Town Manager

Kittery Port Authority
200 Rogers Road
Kittery, ME 03904
Attn: Chairperson & Harbormaster

ARTICLE 7. NOTIFICATION of EMERGENCIES

Each Party shall notify the other of any emergency or condition which may affect the delivery of service to the KPA. Notice must be given following the chain of command to the Harbormaster, KPA Chair, and Town Manager, of said emergency or condition.

ARTICLE 8. SEVERABILITY

If any of the provisions of this IMA or the application thereof to any persons or circumstances is, to any extent, invalid or unenforceable, the remainder of this IMA or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable will not be affected thereby, and every provision of this IMA is valid and enforceable to the fullest extent permitted by law.

ARTICLE 9. AMENDMENTS

9.1 No officer, official, agent, or employee of the Town or KPA has the power to amend, modify, or alter this Agreement or waive any of its provisions or to bind the Town or KPA by making any promise or representation not contained herein, except by Article 10 or by an amendment, in writing, executed for the Town by its Council, and for KPA by its Board members.

9.2 Neither Party may rely on any conduct, statements, action, inaction, or course of conduct of the employees, agents, or officers of the other Party as having changed, modified, or amended this Agreement. Neither Party may waive any provision of this Agreement unless the waiver is executed in writing as an amendment to this Agreement.

9.3 No waiver by either Party of any default or breach constitutes a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by either Party is not construed as a waiver of any term or condition herein nor does it limit the legal or equitable remedies available to that Party.

ARTICLE 10. DISPUTES

10.1 Disputes, differences of opinion, and dissatisfactions which cannot be resolved in the neighborly spirit of this document must first be addressed by either Party serving Notice to the other of the issue(s) and a request for mediation. A Mediation Committee comprised of two members chosen by the Town and two members chosen by KPA must be formed to meet and discuss the issues and disputes and to attempt to find an acceptable resolution.

10.2 The Mediation Committee is to have access to all documents and information from both Parties related to the dispute, and may call witnesses and consult experts as related to the dispute.

10.3 The Mediation Committee may obtain the services of a professional mediator. The selection of the mediator must be agreed upon unanimously by the Mediation Committee and the cost of such professional mediation services is to be split evenly between the Parties.

10.4 The Mediation Committee will report within 120 days of the Mediation Notice to the Parties with its recommendations and the recommendations of the mediator if a mediator is retained.

ARTICLE 11. AGREEMENT CHANGES

From time to time, changes to the port, harbor and navigable waters of the Town may be occasioned by local, state, or federal decree. When changes to this Agreement, including amendments, are deemed necessary by either the Town or KPA, the Kittery Town Council and the Kittery Port Authority, or their designated representatives, agree to meet within thirty (30) days, at the written request of either, to determine if changes are necessary and to make such changes as must be made, in accordance with Article 9.

ARTICLE 12. TERMINATION

During the first two (2) years of this Agreement termination requires the joint agreement of the Parties. Thereafter either Party may serve notice to terminate this Agreement by giving notice thereof to the other Party in writing. Notices of termination must be served on the other Party one (1) year prior to the requested termination date.

ARTICLE 13. REPLACEMENT OF PRIOR AGREEMENTS

This Agreement supersedes and replaces all prior agreements and memorandum of understanding, whether written, verbal, electronically, or otherwise communicated, between the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year below written.

TOWN of KITTERY, MAINE
by its Town Council

KITTERY PORT AUTHORITY
by its Board Members

This ____ day of _____, 2017

This ____ day of _____, 2017

CERTIFICATIONS by TOWN CLERK

I hereby certify and attest that I am the Town Clerk of the Town below named, and that in my capacity as Town Clerk I can attest that the respective Port Authority or Council members who signed this Agreement on behalf of the Town I serve are each duly elected and sitting Councilors of the Town of Kittery Town Council or duly appointed members of the Kittery Port Authority.

Town Clerk, Kittery, Maine

Date

PERSONNEL POSITION-CLASSIFICATION POLICY

This plan is established as council policy, separate from the position establishment and general administration provisions contained in town code Title 2, Administration and Personnel, in order to retain flexibility with position duties and responsibilities.

The town of Kittery is an equal opportunity employer. In compliance with the Americans with Disabilities Act, the town will provide reasonable accommodations to qualified individuals with disabilities and encourages prospective employees and incumbents to discuss potential accommodations with the employer.

Sections:

Article I. Administration

- 1.1 Town manager.**
- 1.2 Town clerk/registrar of voters.**
- 1.3 Deputy town clerk/general assistance administrator.**
- 1.4 Assistant town clerk.**
- 1.5 Deputy treasurer.**
- 1.6 Accountant.**
- 1.7 Administrative clerk.**
- 1.8 Secretary to the town manager.**
- 1.9 Finance director.**
- 1.10 Shoreland/environmental resource officer**
- 1.11 Harbormaster**

1.11 Harbormaster

Purpose of Position: The purpose of this position is to oversee and direct all day-to-day activities of the Town-owned marine facilities, and to patrol waters under the jurisdiction of the Kittery Port Authority (KPA). This position is directed by the Chairperson of the KPA or designee and operates under the general oversight of the Kittery Town Manager. Duties include, but are not limited to: management of the operating budget; supervision of staff; collection of various fees; ensuring compliance with all federal, state, and local ordinances applicable to the harbor, and KPA rules and regulations; permitting and placement of moorings, preparation and submission of reports; maintenance of various data bases and websites; attendance at meetings; and performance of additional tasks as directed by the KPA and the Kittery Town Manager.

- A. Essential Functions: The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.
1. Oversees activities and operations of all KPA jurisdictional waters including, but not limited to: Pepperrell Cove, Isles of Shoals, and Back Channel.
 2. Provides effective communication and interaction with boaters and other users of the waterfront facilities necessary to enforce all Federal and State laws, local ordinances and policies applicable to the vessels operating within the KPA jurisdictional waters and, if necessary, issues tickets and citations for violations.
 3. Prepares and submits administrative written materials, including reports and budgets; provides public relations and communication; establishes and maintains working relationship with contractors, vendors and regulatory agencies; places orders for materials, equipment and supplies.
 4. Hires and evaluates staff; manages employee concerns; directs work assignments and counsels/disciplines employees.
 5. Establishes the marketing/sales plan and budget and is responsible for advertising the resources and services offered by the KPA.
 6. Maintains the municipal mooring records pertaining to annual payments.
 7. Processes applications for mooring site permits, issues permits and resolves all conflicts between adjacent moorings in the mooring field.
 8. Maintains an up-to-date mooring site wait list, mooring site relocation list and a current list of approved mooring inspectors.
 9. Ensures all dinghies at the Town Piers have paid their annual fees and show current sticker.
 10. Ensures that all moored or docked vessels in the KPA jurisdictional waters are registered by the State or documented by the U. S. Coast Guard and verify with the assessor that all boats have paid required excise tax and/or fees.
 11. Reviews and receives various reports, documents and forms, including budgets, invoices, purchase orders, work orders, bids, etc.
 12. Performs periodic inspections of the mooring fields and all harbor facilities.
 13. Investigates and attempts to resolve problems and complaints within the KPA jurisdiction.

14. Attends KPA meetings and Town Council meetings, when appropriate, and attends Kittery Department Head Meetings.
15. Oversees contingency measures required to secure all Town owned waterfront property in the event of anticipated severe weather conditions.
16. Oversees the maintenance, repair and winterization of Harbormaster vessels and equipment, piers and floats.
17. Coordinates the installation and removal of the Town floats and no wake buoys.
18. Maintains the Kittery Harbormaster KPA web presence and electronic surveillance systems.

B. Additional Duties and Responsibilities.

1. Performs other duties as assigned or required.

C. Essential Training and Experience Required to Perform Essential Functions.

1. High School Diploma or Equivalent
2. Completion of 3-day course offered by the Maine Harbor Masters Association to secure the Maine Harbormaster Certification within one calendar year from date of hire.
3. Proficient in all aspects of boat handling
4. Possess basic first aid and CPR certification

D. Minimum Physical and Mental Abilities Required to Perform the Essential Functions.

1. Physical Requirements
 - a. Must be physically able to operate a variety of machines, equipment and vehicles, including but not limited to boats, skiffs, dinghies, computers, and marine electronics, telephone and regular office equipment.
 - b. Must be able to move, carry or reach job-related objects or materials.
 - c. Must be physically capable of lifting 75 pounds
 - d. Must be physically able to swim.
2. Mental Abilities
 - a. Requires the ability to utilize mathematical formulas, and to understand a variety of professional, technical and administrative documentation, directions, regulations, instructions, methods and procedures.
 - b. Requires the ability to produce reports with proper format, punctuation, spelling and grammar.
 - c. Requires the ability to communicate with people to convey or exchange professional information.
 - d. Requires the ability to interact appropriately with staff and public.
 - e. Requires the ability to establish and maintain effective working relationships with superiors, officials, co-workers and the public.
 - f. Ability to cope with situations firmly, courteously, tactfully and with respect for the rights of others.
 - g. Ability to analyze situations quickly and objectively and to determine proper course of action.
 - h. Ability to use computers effectively for general office work, including Microsoft Office Suite, internet research and e-mail.
 - i. Ability to work variable extended hours during the peak season including weekends and holidays.



RECEIVED
DEC 29 2016

TOWN OF KITTERY, MAINE BY: LL 30 Am
TOWN CLERK'S OFFICE
200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: ALAN Rindler

RESIDENCE: 4 SEAPoint Rd

MAILING (if different) _____

E-MAIL ADDRESS: arindler2@gmail.com PHONE #: (Home) 207-403-2447 (Work) 617-645-0921
cell

Please check one choice:

- | | |
|--|--|
| <input type="checkbox"/> Board of Appeals | <input checked="" type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Mary Safford Wildes Trust |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee | <input type="checkbox"/> CIP Committee |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Open Space Committee |
| <input type="checkbox"/> Port Authority | <input type="checkbox"/> Planning Board |
| <input type="checkbox"/> Personnel Board | <input type="checkbox"/> Other _____ |

EDUCATION/TRAINING: 1976 grad Northeastern Univ Sch of Law

RELATED EXPERIENCE (Including other Boards and Commissions) Full time practicing atty 9/76 - 8/2013

none really; except have owned
4 homes in 3 different communities

PRESENT EMPLOYMENT: RETIRED

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY ☒ Yes ☐ No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): No

REASON FOR APPLICATION TO THIS BOARD: Volunteer to help

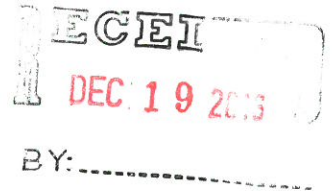
I HAVE / HAVE NOT ☒ ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Mr. Rindler
SIGNATURE OF APPLICANT

12/29/2016
DATE

Peter S. Johnson
14 Tenney Hill Road
Kittery Point, ME 03905



12/19/2016

Kelley Philbrook
Kittery Port Authority Chair
200 Rodgers Road
Kittery, Maine 03904

Dear Ms. Philbrook,

It is with deep regret that effective immediately I must resign from as a board member of the Kittery Port Authority due to ongoing personal issues. I am very sorry that I cannot serve the balance of my term.

I would like to thank you and all the members of the KPA for the privilege to serve the residents of Kittery. It has been a great honor and this experience has renewed my faith in public service and the ability of concerned citizens to work together with a common cause in very honorable, civilized and professional manner.

I'll will always be an advocate for the KPA and always available to share any my resources with you at any time.

Respectfully,

A handwritten signature in black ink, appearing to be "Peter S. Johnson", written in a cursive style.

**REQUEST OF THE KITTERY TOWN COUNCIL – TO ENDORSE AND SUPPORT
Placement of American Flags on utility poles along Memorial Way (State Road)**

Date: December 16 , 2016

**Subject: Placement of American Flags on utility poles along Kittery Memorial Way (State Road)
between Government Street and 7/11 corner by Memorial Circle**

INITIATED BY: Gerry Mylroie, Don Kerr, Ken Lemont, David Lincoln, Dave O'Brian

Background:

Several members of the USS Thresher Committee suggested demonstrating the patriotism of Kittery by annually installing American Flags to the utility poles along State Road on National Holidays, covering Memorial Day and July 4th , with extension in later years covering Nov 11 and Dec 11

Public Flag displays in other Towns has renewed interest in implementing the concept in Kittery

IMPLEMENTATION

1/There are approximately 40 utility poles on State Road from Government Street to 7/11 corner at Memorial Circle

2/Flag sets and shipping are approximately \$50 for each utility pole, and include..3x5' US Flag; 6'x1" metal pole, brass pole attachment bracket , quoted by company supplying Memorial Circle flag

3/ Funding for purchase and maintenance of each set will be 100% from public donations.

4/ Town services are limited to bracket installation and storage of units when not in use

Request:

Town Council TO MOVE

1. Authorize Town Manager to request approval from FairPoint/CMP to install a flag holder / bracket on each of the 40 utility poles, and sign any required agreements allowing the Town to install the brackets and maintain them

2 Authorize the Town Manager to direct the installation the brackets, and the storage the poles and flags when not on display.

3.Endorse the flag being displayed from May 20 to July 15 each year

4. Endorse volunteers installing and removing each flag annually.

5 Recognize the American City Quality Foundation, as the recipient for donations that will be used to pay for costs of flags, brackets , poles, and replacement equipment as needed.

Council support of this demonstration of Kittery patriotism in observing National Holidays is appreciated

POLE ATTACHMENT AGREEMENT FOR MISCELLANEOUS ATTACHMENTS

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC
(d/b/a FairPoint Communications-NNE)
(LICENSOR)**

And

**CENTRAL MAINE POWER COMPANY
(LICENSOR)**

And

**TOWN OF KITTERY, MAINE
(LICENSEE)**

#2112

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POLE ATTACHMENT AGREEMENT FOR MISCELLANEOUS ATTACHMENTS

This Agreement is made as of the _____ day of _____, 2016, between NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC (D/B/A FAIRPOINT COMMUNICATIONS-NNE), , a limited liability company organized and existing under the laws of the State of Delaware, having a place of business at 1 Davis Farm Road, Portland, Maine 04101 ("FairPoint"), and CENTRAL MAINE POWER COMPANY, organized and existing under the laws of the State of Maine, having its principal office at 83 Edison Drive, Augusta, Maine 04336 (either or both hereinafter called "Licensor") and the TOWN OF KITTERY, MAINE, a municipal corporation organized and existing under the laws of the State of MAINE, having its principal office at 200 Rogers Rd, Kittery, Maine 03904 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee, for its own use, desires to place and maintain certain decorative attachments on the poles of Licensors; and in the geographic area of the Town of Kittery, Maine.

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of certain attachments by Licensee on Licensor's poles subject to the terms of this agreement;

NOW, THEREFORE, in consideration of mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

1. Definitions

- 1.1. Licensor-The owner or custodian of a pole, and the only party permitted to issue a license for that pole.
- 1.2. Licensee-The person, corporation or other legal entity authorized by the Licensor under this Agreement to make attachments to utility poles and the party responsible for compliance with Licensor's regulations regarding such accommodations.
- 1.3. Licensee's Attachments-Any article or device that is for the sole use of the Licensee that requires a physical connection to the Licensor's pole.
- 1.4. Joint Owner-A person, corporation or other legal entity having an ownership interest in a pole with the Licensor.
- 1.5. Joint User-A party to a Joint Use Agreement with Licensor whereby privileges for the joint use of poles have been extended or will be extended to and from Licensor. The term "Joint Users" shall not include Licensee.
- 1.6. Other Licensees-Any person, corporation, or other legal entity other than the Licensee herein, to whom the Licensor has or hereafter shall extend an authorization to attach facilities to a pole.
- 1.7. Periodic Inspection-Inspections conducted at unscheduled intervals on portions of Licensee's facilities, to determine that Licensee's attachments are authorized and that Licensee's attachments are maintained in conformance with the required standards.

- 1.8. Pole Attachment-Any article or device in direct contact with or otherwise supported by a utility pole. For the purposes of this agreement, an attachment shall include only decorative type attachments (wreaths, banners, flags, etc.) and not cables or wires for any types of communication or signaling.
- 1.9. Post-Construction Inspection-The work operations and functions performed to measure and/or visually observe Licensee's attachments, during or shortly after completion of the construction of such facilities, to determine that all attachments have been authorized and construction conforms to the standards required by this Agreement.
- 1.10. Preconstruction Survey-The work operations and functions performed in order to process an application for pole attachments. Elements of the Preconstruction Survey include: 1/field inspection of the existing facilities, and 2/ administrative effort required to process the application.
- 1.11. Subsequent Inspections-Inspections performed to confirm the correction of nonconformance to specification that are observed during Post-Construction or Periodic Inspections.
- 1.12. Utility Pole-A pole, solely owned, jointly owned, or jointly used by the Licensor, used to support the facilities of the Licensor and joint user.
- 1.13. Attachment Rate-A specified fee charged by Licensor for pole attachment licenses.
- 1.14. Make-Ready Work-All work, including rearrangement and/or transfer of Licensor's facilities, replacement of facilities and any other changes required to accommodate the attachment of Licensee to a pole.

2. Scope of Agreement

- 2.1. The Licensor will issue to the Licensee for any lawful purpose, revocable, nonexclusive licenses authorizing the Licensee's attachments that are fully described in Attachment 1, attached hereto, and made part hereof.
- 2.2. This Agreement is limited to only attachments described in Attachment 1, authorizing their attachment to the Licensor's poles in the **Town of Kittery, Maine**. Other attachments constitute a violation of this agreement.
- 2.3. Except as otherwise provisioned in the Agreement, the Agreement may not be waived or modified except by a written document that is signed by the Licensee and Licensor.

3. Compliance with Applicable Law

The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances, or regulations remain in effect. Licensee agrees to indemnify and hold harmless Licensor for, from and against and defend Licensor against, any loss or damage sustained because of Licensee's noncompliance hereunder.

4. Rights in Utility Poles

No use, however extended, of a utility pole or payment of any fee or charge required hereunder shall create or vest in the Licensee any ownership or property right in such a pole.

5. Requirement to Construct and Maintain a Utility Pole

Nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend repair, place, replace or maintain any utility pole not needed for the Licensor's own service requirements.

6. Abandonment

Nothing in this Agreement shall prevent or be construed to prevent FairPoint from abandoning, selling, assigning or otherwise disposing of any poles or other FairPoint property used for Licensee's Attachments; provided, however, that FairPoint shall condition any such sale, assignment or other disposition subject to the rights granted to Licensee pursuant to this Agreement. FairPoint shall promptly notify Licensee of any proposed sale, assignment or other disposition of any poles or other FairPoint property used for Licensee's Attachments.

7. Other Agreements

Nothing contained herein shall be construed as a limitation, restriction, or prohibition against the Licensor with respect to any agreement(s) and arrangement(s) which the Licensor has entered into, or may in the future enter into, with others not covered by this Agreement, except that authorizations for attachments existing at the time of such future agreements or arrangements shall not be diminished. The rights of Licensee shall at all times be subject to such existing and future agreement(s) or arrangement(s). The Licensor in negotiating and entering into any such agreement(s) and arrangement(s) shall give due and reasonable regard to the Licensee's potential future interest in Licensee accommodation to a utility pole to be covered by such future agreement(s) and arrangement(s).

8. Assignment of Rights

8.1 Licensee shall not assign or transfer any license or any authorization granted under this Agreement, and such licenses and authorizations shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of Licensor, which shall be in the form of an assignment agreement satisfactory to the Licensor. Licensor shall not unreasonably withhold, condition, or delay such consent.

8.2 In the event such consent or consents are granted by Licensor, then the provisions of this Agreement shall apply to and bind the successors and assigns of Licensee.

Licensee may, however, assign this Agreement without Licensor's consent to an entity controlling, controlled by, or under common control with Licensee or to an entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets provided that any such assignment shall be subject to the assignee's being capable of assuming all of the obligations of Licensee

hereunder. Any such assignment shall impose no obligations upon or be effective against Licensors, and Licensors shall have no liability to any assignee of such assignment, until Licensors has received prior notice of any such assignment. Licensee may also assign this Agreement, without Licensors's consent and without prior notice to FairPoint, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Facilities in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Licensee Facilities on the Right of Way; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee hereunder and further provided that such assignment shall not be effective against Licensors unless and until written notice of such assignment and exercise of rights is provided to Licensors. Anything herein to the contrary notwithstanding, Licensee shall not be relieved of any of its obligations hereunder without Licensors's prior written consent.

- 8.3 All notice of such assignments shall include any change to the notice address provided in paragraph 11.1.3. Within thirty (30) days of the assignment, Licensors and assignee shall execute an assignment agreement.

9. Permits and Consents

- 9.1. Licensee shall be responsible for obtaining from private property owners and/or public authorities easements, rights of way, licenses, permits, permissions, certifications and/or franchises for Licensee's attachments to be on private and/or public property, at the location of the utility pole.

10. Limitation of Rights

- 10.1. Licensee is aware and acknowledges that the Licensors is not required to maintain its pole(s) for the sole purpose of supporting the Licensee's attachments(s) and upon termination of the attachment rights provided for under this Agreement, or in the event any part or all of Licensors's pole(s) plant devoted to any attachment(s) authorized under this Agreement should be ordered removed or relocated, or the right to maintain such pole(s) is terminated by appropriate governmental or agency authority, or Court, having jurisdictions over such poles, then the attachment rights created under this Agreement shall thereupon terminate at the sole option of Licensors, and if terminated such attachment shall be forthwith removed by the Licensee at the Licensee's sole expense. Licensee acknowledges that the Licensors cannot and does not guarantee that the attachments will remain on the poles, nor will notice be given if pole(s) is (are) removed, replaced or relocated. Substitute attachment(s) may be placed on replacement pole(s) only upon application and approval by the Licensors.
- 10.2. Licensors may remove any Licensee attachment, without notice, if in the Licensors's judgment; Licensee's attachments interfere with the safe operation, maintenance or construction of its plant.
- 10.3. Licensors may require Licensee to move, rearrange, relocate or remove any Licensee attachment, at Licensee's expense, if required due to Licensors's needs for operation, maintenance, or construction or for the attachment by another Licensee.

11. Notice

11.1.1 Except as otherwise provided in this Agreement, notices given by Licensee or Licensors under this agreement:

11.1.2 shall be in writing;

11.1.3 shall be delivered (a) personally, (b) by express delivery service with next Business Day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, or (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b), or (c), preceding; and

11.1.4 shall be delivered to the following addresses of the Licensee:

To Licensee:

Kendra Amaral, Town Manager
Town of Kittery
Town Hall
200 Rogers Road
Kittery, Maine 03904

To Licensors:

FairPoint Communications
License Administration Group
5 Davis Farm Rd
Portland, ME 04103

To Licensors:

Central Maine Power
Joint Use of Plant Supervisor
83 Edison St
Augusta, Me 04336

Or to such other address as either Licensee or Licensors shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next Business Day deliver, the next Business Day after the notice is sent, (c) where the notice is sent via First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, and (e) where the notice is sent via facsimile telecopy, if the notice is sent on a Business Day and before 5 PM in the time zone where it is received, on the date set forth on the telecopy confirmation, or if the notice is sent on a non-Business Day or if the notice is sent after 5 PM in the time zone where it is received, the next Business Day after the date set forth on the telecopy confirmation.

PROCEDURES

12. Initial Procedure

Prior to Licensee making any attachments to the Licensors' utility poles, the Licensee must conform to the requirements specified in paragraphs 13, 14, and 15, herein and pay fees as set forth in paragraphs 25 and 26, herein.

13. Application for Authorization

Licensee shall make written application, utilizing the form identified as Exhibit A. This form will also be used by the Licensors to grant authorization to the Licensee. The application will be reviewed, and preconstruction surveys performed, as necessary, by Licensors in order to verify its accuracy.

14. Detailed Description of Attachments

The licensee shall provide to the Licensors a detailed description and parameters of the proposed attachments. The description may be written narrative and/or by the use of a sketch or sketches, which, if approved by the Licensors, will be designated as Attachment 1 to the Agreement as indicated in Subparagraph 2.1 herein. Additionally, all materials used and the method of construction of the proposed attachments must be approved by the Licensors.

15. Consent of Joint Users

This Agreement shall be between the Licensee and Licensors. Licensors shall be the joint users, joint owners or sole owners of the poles on which the Licensee's attachments are made.

SPECIFICATIONS

16. Conformance to Code

Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the "Blue Book – Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; the "National Electrical Code" (NEC), published by the National Fire Protection Association, Inc.; the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970" as amended, (OSHA) or any other governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.

17. Removal of Hazards

If any part of the Licensee's attachments pose an immediate threat to the safety of the Licensors' employees or any other person, interfere with the performance of the Licensors' service obligations, or pose an immediate threat to the physical integrity of the pole plant, the Licensors may perform any work and/or take any action that the Licensors deems necessary to eliminate such conditions, at Licensee's expense, without prior notice to Licensee.

18. Licensee's Employees and Agents

Licensee shall assure that only trained, qualified employees, contractors, agents, or other representatives of Licensee shall place, maintain, remove, relocate or construct its facilities on Licensors poles or otherwise climb or ascend Licensors pole for any reason.

INSPECTIONS

18. Pre-Construction Surveys

A pre-construction survey will be required for each pole for which attachment is requested to determine the adequacy of the pole to accommodate Licensee's attachments. The field inspection will be performed by representatives of the Licensor with participation by joint owner(s), joint user(s), other Licensees and the Licensee.

20. Post Construction, Subsequent and Periodic Inspections

- 20.1 The Licensor reserves the right to make post-construction, subsequent and periodic inspections (of any part or all) of Licensee's attachments.
- 20.2 The making of post-construction, subsequent and/or periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability specified in this Agreement.
- 20.3 Licensor reserves the right to make periodic inspections of all or any part of the licensee's attachments on poles owned by the Licensor and/or Joint User(s). If in Licensor's judgment inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement by Licensee, such inspections may be made without notice and may include all of the Licensees attachments.

21. Unauthorized Attachments

- 21.1 If any of Licensee's attachments shall be found attached to a pole for which authorization has not been granted by the Licensor, the Licensor, without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require the Licensee to submit in writing, within ten (10) days after receipt of written notification from the Licensor of the unauthorized attachment, a pole attachment application. If such application is not received by the Licensor within the specified time period, the Licensee will be required to remove its unauthorized attachment within ten (10) days of the final date for submitting the required application, or the Licensor may remove the Licensee's attachments without liability, and the cost of such removal shall be borne by the Licensee.
- 21.2 Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized attachment from its inception. Notwithstanding the above, no act or failure to act by the Licensor with regard to said unauthorized attachment shall be deemed as the authorization of the attachment; and, if any authorization should be subsequently issued, said authorization shall not operate retroactively or constitute a waiver by the Licensor of any of its rights or privileges under this Agreement, or otherwise.

INSURANCE, INDEMNIFICATION AND LIABILITY

22. Insurance

- 22.1 Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and maintain all insurance and/or bonds required by law or this Agreement including without limitation:
 - 22.1.1 Commercial General Liability Insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2,000,000 combined single limit for each occurrence.
 - 22.1.2 Commercial Automobile Liability insurance with limits of at least \$1,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the Licensee's business or associated with the work related to this Agreement, then the Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.
 - 22.1.3 Workers' Compensation insurance as required by statute and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence.
- 22.2 The above limits may be satisfied by a combination of underlying/primary and excess/umbrella insurance. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverage's. The Licensee shall waive its right of subrogation for all insurance claims. The Commercial General Liability and Commercial Auto Liability policies must name Licensor's their subsidiaries and affiliates as additional insured's. The Licensee's insurance companies must be licensed to do business in the applicable state(s).
- 22.3 All insurance must be in effect before Licensor will authorize Licensee to make attachment to Licensor's pole(s) and shall remain in force until such Attachments have been removed from all such poles. For all insurance, the Licensee must deliver an industry-recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and the waiver of subrogation and stating that the policy of insurance issued to Licensee will not be cancelled or changed without thirty (30) days written notice to Licensor.

Also where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.

- 22.4 Licensee is responsible for determining whether the above minimum insurance coverage's are adequate to protect its interests. The above minimum coverage's shall not constitute limitations upon Licensee's liability.

23. Indemnification

- 23.1 Licensors reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensors shall not be liable to Licensee for any interruption of Licensee's service nor for interference with the operation of Licensee's communications services arising in any manner, except from Licensors's sole negligence, out of the use of Licensors's poles.
- 23.2 Licensors shall exercise reasonable care to avoid damaging the facilities of Licensee attached to poles under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensors's employees, agents or contractors. Licensors agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of damage to such Licensee's facilities proximately caused by the negligence of Licensors;
- 23.3 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensors and of others attached to poles and shall make an immediate report of damage to the owner of facilities so damaged. Licensee assumes all responsibility for any and all direct loss from damage caused by Licensee's employees, agents or contractors;
- 23.4 Licensee shall indemnify, protect and save harmless the Licensors from and against any and all claims, demands, causes of action and costs, including attorneys' fees, for damages to property and injury or death to persons, including among other things payments made under any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the erection, maintenance, repair, replacement, presence, use or removal of Licensee's attachments or by their proximity to the facilities of all parties attached to utility poles, or an act or omission of Licensee's employees, agents, contractors or any other person. In furtherance of licensees's indemnification obligations under this Agreement and not by way of limitation thereof, the licensee hereby waives any defenses or immunity it might otherwise have under applicable worker's compensation laws or any other statute or judicial decision disallowing or limiting such indemnification, including without limitation, Diamond International Corp. vs. Sullivan & Merritt, Inc., 493 A2d. 1043 (Me. 1985), and Licensee consents to a cause of action by Owner for indemnity. The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of Licensors.

It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Licensee and Licensors, but in such case the amount of the claim for which Licensors is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of Licensee.

- 23.5 Licensee shall indemnify, protect and save harmless the Licensor from any and all damages, cost and expenses imposed on the Licensor as a result of the presence of the Licensee's attachment on the pole and/or acts by the Licensee, its employees, or its agents, contractors, or any other person, including but not limited to damages, costs and expense of relocating utility poles resulting from loss of right-of-way or property owner consents and/or the costs and expense of defending these rights up to the limits of insurance coverage contained in this Agreement. Licensee specifically agrees to waive any claims of statutory immunity related to municipal pole attachments and further agrees that it is liable for any and all damages, costs and expenses imposed on the Licensor up to the limits of its insurance coverage consistent with 14 M.R.S.A. § 8116.
- 23.6 Licensor and Licensee shall promptly advise each other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.
- 23.7 The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued there under.

TERMINATION OF AUTHORIZATION

24. Termination of Authorization

- 24.1 In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate utility pole attachment authorizations and rights granted under provisions of this Agreement.
- 24.1.1 the Licensee's attachments are maintained or used in violation of any law or in aid of any unlawful act or undertaking, or
- 24.1.2 the Licensee ceases to have authority to construct attachments on public or private property at the location of the particular pole covered by the authorization; or
- 24.1.3 the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations hereunder; or
- 24.1.4 the Licensee attaches to a utility pole without having first been issued authorization therefore; or
- 24.1.5 the Licensee, subject to provisions specified in the scope of the agreement, ceases to provide its services; or
- 24.1.6 the Licensee's attachments are used by others not a party to this Agreement unless under provision of Section 7; or
- 24.1.7 the Licensee sublets or apports part of the Licensed pole attachment to an entity not a party to this Agreement unless under provision of Section 7.

- 24.2 The Licensors will promptly notify the Licensee in writing of any instances cited in Subparagraph 24.1 preceding. The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licensors within thirty (30) days following such written notice that the noncompliance has ceased or been corrected. If Licensee fails to discontinue such non-compliance or to correct same and fails to give the required written confirmation to the Licensors within the time stated above, the Licensors may terminate the attachment authorizations granted hereunder for utility poles as to which such non-compliance shall have occurred.
- 24.3 Pole attachment authorizations and rights as granted under provisions of this Agreement may be immediately terminated by the Licensors if:
- 24.3.1 The Licensee's insurance carrier shall notify the Licensors that the policy or policies of insurance as required in Paragraph 22 will be or have been cancelled or amended so that those requirements will no longer be satisfied.
- 24.3.2 The Licensee shall fail to pay any sum due or to deposit any sum required under this Agreement.
- 24.3.3 Any authorization which may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities on a utility pole is denied, revoked or cancelled.
- 24.4 Licensee may at any time remove its facilities from a pole after first giving the Licensors written notice, utilizing the form indentified as Exhibit B, of Licensee's intention to so remove its facilities.
- 24.5 In the event of termination of any of the Licensee's authorizations hereunder, the Licensee will remove its attachments from the poles within thirty (30) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensors until Licensee's attachments are actually removed from the utility poles. If the Licensee fails to remove its attachments within the specified period, the Licensors shall have the right to remove such attachments at the Licensee's expense and without any liability on the part of the Licensors for damage or injury to such attachments.
- 24.6 When Licensee's attachments are removed from a utility pole no attachment to the same utility pole or anchor shall be made until the Licensee has first complied with all of the provisions of this Agreement as though no such pole attachment had been previously made and all outstanding charges due to the Licensors for such pole attachment had been paid in full.

RATES AND CHARGES

25. Administrative Fee

There shall not be an administrative fee for the execution of this agreement.

26. Charges for Surveys

There shall not be a charge for the pre-construction surveys.

27. Charges for Make-Ready Work

All costs to the Licensor associated with any make-ready work initiated by the Licensee's request for pole attachments shall be borne by the Licensee. These charges shall be billed to and paid for by the Licensee prior to the start of any make-ready work by the Licensor.

GENERAL PROVISIONS

28. License Not Exclusive

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any poles and/or anchors covered by this Agreement.

29. Survival

All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

30. Failure to Enforce

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

31. Term of Agreement

Unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect from the date hereof and thereafter until three (3) months after written notice of termination is given by either party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

Northern New England telephone Operations LLC

d/b/a FairPoint Communications (Licensor)

By: _____

Printed: _____

Title: _____

Date: _____

Central Maine Power Company (Licensor)

By: _____

Printed: _____

Title: _____

Date: _____

Town of Kittery, Maine (Licensee)

By: _____

Printed _____

Title _____

Date _____

ATTACHMENT 1 (SEE PARAGRAPH 14)

Attachment Guidelines

Following are guidelines accepted by Northern New England Telephone Operations LLC, dba FairPoint Communications NNE (FairPoint) that provide a safe method of attaching attachments to jointly used / owned poles:

- Attachments require a license from both pole owning utilities.
- Attachments should be of light weight to allow for handling by a single technician.
- Attachments should be mounted below all telephone attachments where possible so as not to interfere with access for pole / plant maintenance.
- Attachments should, where possible, be mounted to brackets which allow for easy removal, ie “quick connect pins”, so mounting bracket can be left in a permanent position.
- Attachments shall be made with either appropriately sized lag screws or appropriately sized plastic or metal banding. Brackets shall be of adequate strength to support the attachment. Where possible, attachments affixed via lag screws should not be removed to avoid annual re-drilling which compromises the integrity of the pole.
- When attachments are permanently removed all hardware shall be removed.
- No attachment should extend more than 42” horizontally from the pole surface.
- All separations from power shall be determined from table 232-2 of the NESC. Clearances from telephone and other attachments shall be determined at the time of the survey.
- Vertical clearances of 15.5’ over roads, 12’ over sidewalks and 9.5’ over spaces accessible to pedestrians only shall be maintained.
- Electrification of any attachment shall be performed under power company supervision and must incorporate conduit, GFI protection, and a plug or disconnect device below the communications space by which a technician can de-energize the attachment if required while working on the pole.
- Pole to pole, pole to tree or pole to building attachments are not allowed.
- Painting of poles is not allowed.
- Paper signs shall be attached by tape or light twine.
- No commercial advertisements shall be allowed.

BUREAU OF ALCOHOL BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT
8 STATE HOUSE STATION, AUGUSTA, ME 04333-0008
10 WATER STREET, HALLOWELL, ME 04347
TEL: (207) 624-7220 FAX: (207) 287-3434
EMAIL INQUIRIES: MAINELIQUOR@MAINE.GOV

DIVISION USE ONLY	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Cash Ck Mo:	

NEW application: ☐ Yes ☒ No

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☐ MALT ☒ VINOUS ☒ SPIRITUOUS

INDICATE TYPE OF LICENSE:

- ☒ RESTAURANT (Class I,II,III,IV) ☐ RESTAURANT/LOUNGE (Class XI) ☐ CLASS A LOUNGE (Class X)
☐ HOTEL (Class I,II,III,IV) ☐ HOTEL NO FOOD (Class I-A)
☐ CLUB w/o Catering (Class V) ☐ CLUB with CATERING (Class I) ☐ GOLF COURSE (Class I,II,III,IV)
☐ TAVERN (Class IV) ☐ QUALIFIED CATERING ☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

Corporation Name: LOCO COCO'S TACOS CORP		Business Name (D/B/A) LOCO COCO'S TACOS CORP	
APPLICANT(S) –(Sole Proprietor) LUIS VALDEZ		DOB: 01/26/1966	
Physical Location: 36 WALKER ST		City/Town KITTERY	
State ME		Zip Code 03904	
Address 36 Walker St		Mailing Address same	
City/Town KITTERY		State ME	
Zip Code 03904		City/Town KITTERY	
State ME		State ME	
Zip Code 03904		Zip Code 03904	
Telephone Number (207) 438-9322		Fax Number (207) 438-9389	
Business Telephone Number same		Fax Number same	
Federal I.D. # 20-1162173		Seller Certificate #: or Sales Tax #: 1079200	
Email Address: Please Print management@locococos.com		Website: www.locococos.com	

If business is NEW or under new ownership, indicate starting date: _____

Requested inspection date: _____ Business hours: **11-8 S-T 11-9 W-S**

1. If premise is a Hotel or Bed & Breakfast, indicate number of rooms available for transient guests: **N/A**
2. State amount of gross income from period of last license: ROOMS \$ **N/A** FOOD \$ **2.5mill** LIQUOR \$ **\$500,000**
3. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

If Yes, please complete the Corporate Information required for Business Entities who are licensees.

4. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒
5. If manager is to be employed, give name: **JAMI SCARDINA**
6. Business records are located at: **36 Walker St Kittery, ME 03904**
7. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐
8. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

9. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Luis Valdez	1/26/66	Tijuana, Mex
Ramona Valdez (Robinson)	8/29/56	Biddeford, ME
Jami Scardina	10/7/76	Portsmouth, NH
Residence address on all of the above for previous 5 years (Limit answer to city & state)		
Natascha Mullar-Shea	2/7/85	Martinez, CA
all reside in Kittery, ME & Eliot, ME		

10. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____ (use additional sheet(s) if necessary)

11. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?
Yes ☐ No ☒ If Yes, give name: _____

12. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

13. Does/do applicant(s) own the premises? Yes ☒ No ☐ If No give name and address of owner: _____

14. Describe in detail the premises to be licensed: (On Premise Diagram Required) see attached
Diagram

15. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☒ NO ☐ Applied for: _____

16. What is the distance from the premises to the **NEAREST** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1/2 mile Which of the above is nearest? church

17. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☐

If YES, give details: mortgage - Kennebunk Savings Bank

The Division of Liquor Licensing & Enforcement is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Dec 14, 2016 on 14 Date, 20 16
Town/City, State

[Signature]
Signature of Applicant or Corporate Officer(s)
Luis A Valdez
Print Name

Please sign in blue ink

Ramona G Valdez
Signature of Applicant or Corporate Officer(s)
Ramona G Valdez
Print Name



Division of Alcoholic Beverages and Lottery
Operations
Division of Liquor Licensing and Enforcement

**Corporate Information Required for
Business Entities Who Are Licensees**

For Office Use Only:

License #: _____

SOS Checked: _____

100% Yes ☐ No ☐

Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752.

Please clearly complete this form in its entirety.

1. Exact legal name: Loco Coco's Tacos Corp
2. Doing Business As, if any: Loco Coco's Tacos
3. Date of filing with Secretary of State: 5/18/2004 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attach additional sheets as needed)

NAME	ADDRESS (5 YEARS)	Date of Birth	TITLE	Ownership %
Luis Valdez	9 Eliot Shores Eliot ME 03903	1/26/66	owner- President	60
Ramona Valdez	9 the Eliot Shores Eliot, ME 03903	8/29/56	owner- Vice President	40

(Stock ownership in non-publicly traded companies must add up to 100%.)

6. If Co-Op # of members: _____ (list primary officers in the above boxes)

7. Is any principal person involved with the entity a law enforcement official?

Yes ☐ No ☒ If Yes, Name: _____ Agency: _____

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed)

Name: _____


Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

 Dec 14, 2016
Signature of Duly Authorized Person Date

Luis A. Valdez
Print Name of Duly Authorized Person

Submit Completed Forms To:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-0008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov

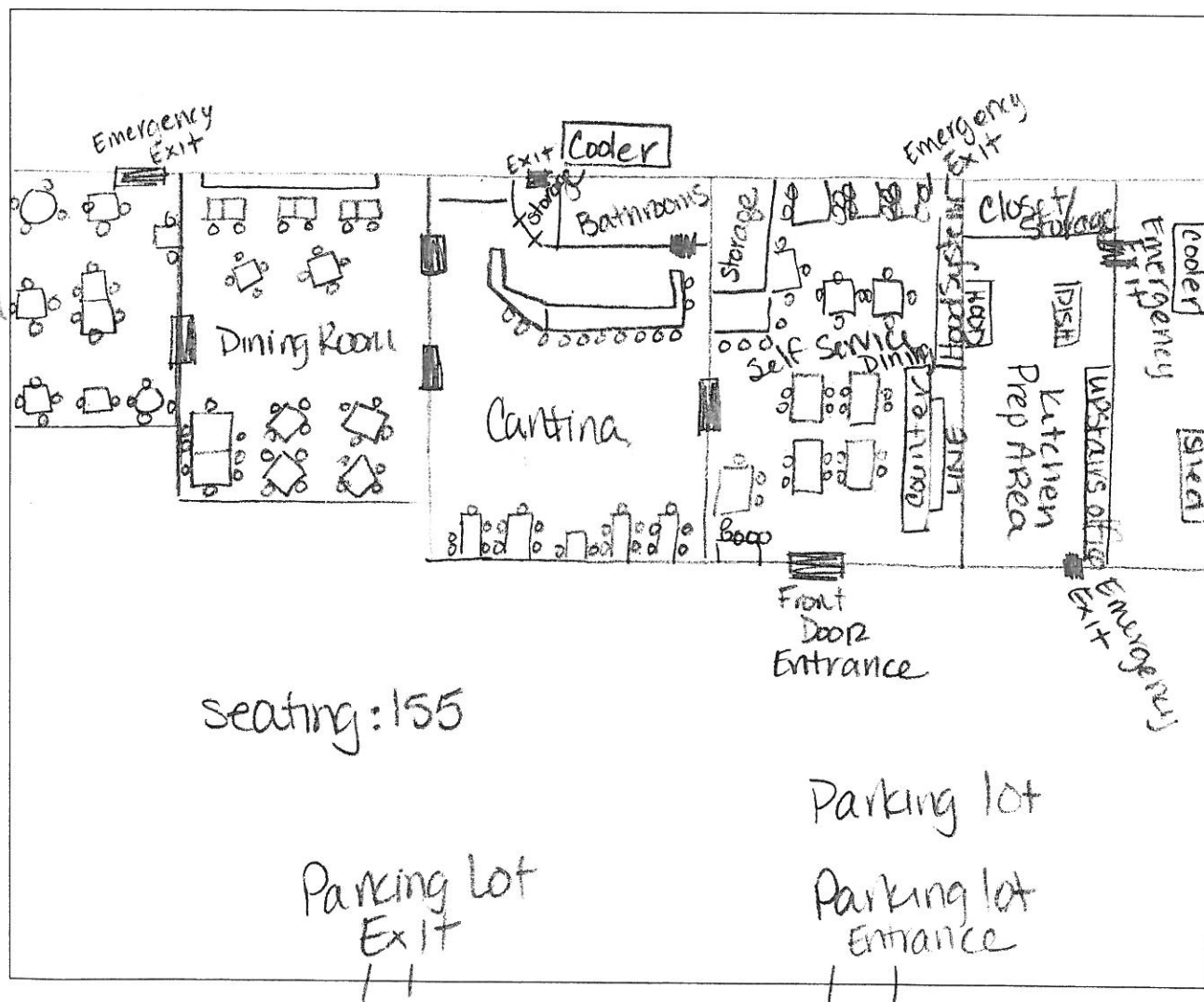
Bureau of Alcoholic Beverages and Lottery Operations
 Division of Liquor Licensing & Enforcement
 8 State House Station, Augusta, ME 04333-0008
 10 Water Street, Hallowell, ME 04347
 Tel: (207) 624-7220 Fax: (207) 287-3434
 Email Inquiries: MaineLiquor@maine.gov

DIVISION USE ONLY	
<input type="checkbox"/>	Approved
<input type="checkbox"/>	Not Approved
BY:	

ON PREMISE DIAGRAM

In an effort to clearly define your license premise and the area that consumption and storage of liquor is allowed. The Division requires all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, decks and all areas that you are requesting approval from the Division for liquor consumption.



FEE SCHEDULE

FILING FEE: (must be included on all applications)		\$ 10.00
Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV	Malt Liquor Only	\$ 220.00
	CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
	CLASS V: Clubs without catering privileges.	
Class X	Spirituos, Vinous and Malt – Class A Lounge	\$2,200.00
	CLASS X: Class A Lounge	
Class XI	Spirituos, Vinous and Malt – Restaurant Lounge	\$1,500.00
	CLASS XI: Restaurant/Lounge; and OTB.	

UNORGANIZED TERRITORIES \$10.00 filing fee shall be paid directly to County Treasurer. **All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.**

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval and signatures for liquor licenses prior to submitting them to the bureau.

All fees must accompany application, make check payable to the **Treasurer, State of Maine.**

This application must be completed and signed by the Town or City and mailed to:
Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, ME 04333-0008.
Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.

- A. Conviction of the applicant of any Class A, Class B or Class C crime; [1987, c. 45, Pt. A, §4 (NEW).]
- B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c. 45, Pt. A, §4 (NEW).]
- C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c. 730, §27 (AMD).]
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c. 592, §3 (AMD).]
- E. A violation of any provision of this Title; [2009, c. 81, §1 (AMD).]
- F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and [2009, c. 81, §2 (AMD).]
- G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages. [2009, c. 81, §3 (NEW).]
[2009, c. 81, §§1-3 (AMD) .]

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. [1993, c. 730, §27 (RP).]

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause. [1993, c. 730, §27 (AMD) .]
[1995, c. 140, §6 (AMD) .]

4. No license to person who moved to obtain a license. [1987, c. 342, §32 (RP) .]

5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

[1995, c. 140, §7 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

Please be sure to include the following with your application:

Completed the application and sign the form.

Signed check with correct license fee and filing fee.

Your local City or Town's signature(s) are on the forms.

Be sure to include your ROOM, FOOD and LIQUOR gross income for the year (if applicable).

Enclose diagram for all businesses, auxiliary locations, extended decks and storage areas.

Complete the Corporate Information sheet for all ownerships except sole proprietorships.

If you have any questions regarding your application please contact us at (207) 624-7220.

Dated at: _____, Maine _____
City/Town (County)

On: _____
Date

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and hereby approve said application.

2. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:



TOWN OF KITTERY, MAINE

200 Roger Road, Kittery, ME 03904
Telephone: (207) 439-0452 Fax: (207) 439-6806

Date issued to CEO: Dec. 28, 2016

TO: MARYANN PLACE, TOWN CLERK
FROM: ROBERT MARCHI, CODE ENFORCEMENT OFFICER
RE: BUSINESS SITE INSPECTION

NAME OF BUSINESS: Loco Coco's Tacos
BUSINESS LOCATION: 36 Walker Street
BUSINESS PHONE #: 438-9322
NAME OF APPLICANT: Luis Valdez

☐ VICTUALERS LICENSE
☒ LIQUOR LICENSE
☐ SPECIAL ACTIVITY AMUSEMENT PERMIT
☐ OTHER

☒ A site inspection was conducted at the establishment listed above on 2/16/16.
I recommend the Town Council approve the above-mentioned license/permit for this establishment.

☐ A site inspection was conducted on _____ and failed due to the following deficiencies: _____

A re-inspection will be done on _____.

B Marchi
Code Enforcement Officer

12/28/16
Date